A COMPLEAT PARSON:

OR,

A DESCRIPTION OF ADVOWSONS,

or Church-liuing.

WHEREIN

Is ſet forth, the intreſts of the Parſon, Patron, and Ordinarie, &c.

WITH

Many other things concerning the ſame matter, as they were deliuered at ſeuerall Readings at *New-Inne*,

By I. DODERIDGE,
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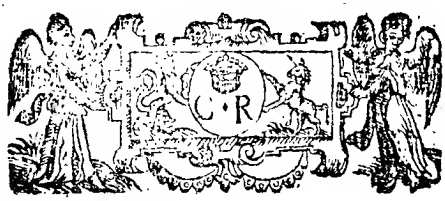


To the Reader.

BOokes that are not able to protect themselues, may require large Preface and Dedication, this needeth none, it teacheth the Law, and therefore cannot feare any Informer; errors of the print may here and there offer themselues, but for any other, the honourable Name of him (to whom Posteritie shall thankfully acknowledge a debt for his *Worke*) in the very Title page is able to vindicate.

If thou beeſt a Caviel, yet bee not too quicke at cenſure, ſatiſfie thy ambition for the preſent with a Readers place; thou mayeſt in time come to bee a iudge, which euery man is not borne too.

Farewell.

THE

THE CONTENTS OF the Lectures enſuing.

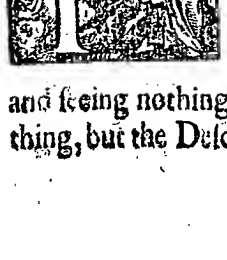
9 How

A COMPLEAT PARSON:

OR, A DESCRIPTION OF ADVOWSONS.

LECT. I.

The name, nature, Diviſions, Conſequents, cauſes and incidents of Advowſons or Patronages.



Oraſmuch as wee are ſaid to know, *cum Cauſas cognoſcimus*, and ſeeing hee laboureth in vaine, that ſeeketh to apprehend the knowledge of the accident, which is ignorant of the ſubſtance: and ſeeing nothing ſetteth out the nature of the thing, but the Deſcription and Definition, and

Tul: Offic. lib.1. that *Omnis quæ à ratione ſuſcipitur, de re aliqua, inſtitutio, debet à definitione proficiſci, vt intelligatur quid ſit id de quo diſputatur:* I will begin as good order requireth, with the Deſcription of an *Aduowſon*, that the nature thereof being knowne, wee may the better obſerue, the coherence and congruence of this kind of Learning.

Quid. An *Aduowſon* therefore generally conſidered, is a right that a man hath, to preferre his friend, or any fit perſon, to promotion Preſentatiue, or Donatiue.

This Definition is generall, and may be attributed to all perſons, whereof a man may haue a *Quare Imp:* if hee be Diſturbed; for, the Writs mentioned in the Statute, lyeth not onely of Dignities Preſentatiue by the courſe of the Common Law, but alſo of promotions Donatiue by this Statute: As Chaunteries Donatiue, * Free chappels, &c. Alſo it lyeth, of a Subdeaconſhip, or Hermitage, which alſo may bee Donatiue, and this is grounded vpon the words of the Statute, *De cetero concedantur brevia de Cappillis, Prebendis, Vicarijs, Hoſpitalibus, Abbatis quæ prius concedi non conſueuerunt;* Yet neuertheleſſe, I read that a *Quare Imp:* was maintained of a Chappell, by the Common Law, but ſuch a Chappell (perchance) was Preſentatiue, and not Donatiue. Promotions preſentatiue (whereof the Writs are mentioned

Fitzh. N. Br.30. Ibid. 33.a.31.E. Ib.34 9.E.

14.H.3. Fitzh. quare Imp.183.

tioned in the Statute) were maintained at the Common Law; as Churches, Chaunteries, and Chappels Preſentatiue, and ſuch like.

And therefore as the afore-ſpecified Definition, or Deſcription is generall, and appliable to both: So are thoſe ſubſequent, more properly to be applied to Churches *Advowſons*, in which are Cures of Soules.

An *Advowſon*, or as the terme, *Ius Patronatus eſt poteſtas preſentandi aliquem inſtituendũ ad beneficium Eccleſiæ ſimplex & vacans:* and of other reſpects, the cauſes and incidents of *Advowſons*, is Deſcribed more amply in ſuch manner, *Ius patronatus, eſt ius honorificum, oneroſum, & vtile.*

Summa hoſtienſis de iure patrono.
Sũma Anglic. eod. tit.
Sũma Silueſtrina tit. Patronatus.

In effect this: A *Patronage*, or an *Advowſon*, is a right to preſent to the Biſhops or Ordinarie a fit perſon, by him to bee admitted and Inſtituted into a Spirituall Benefice when it becommeth voyd: And hee that hath ſuch right to preſent, is called Patron: who is thus deſcribed, *Patronus eſt defenſor Eccleſiæ, qui habet ius preſentandi Epiſcopo aliquem vel aliquos in aliqua Eccleſia & in ea ab eo inſtituatur.* And hee is ſo called, *De patrocinio*, of defence: For that, that hee ſhould defend the Church, or *à ſimilitudine Patris, quia ſicut pater filium, ſic patronus Eccleſiam, de non eſſe, deducit ad eſſe.*

Hee is called of Old *Glanvile*, *Advocatus*; as that he ſhould ſay, an Advocate of the cauſes of

the Church, and therefore the inheritance is called *Advocatio*, or *Advowson*, or is deuised *De vocando*: for that, that the Patron hath power, for the presentment of a fit person, by the name of his presentation. And heere by the way, let no man thinke, that I thrust my selfe *in messem alienam*, and to borrow of the Cannonists, as well now the Description and Etimologie before shewed, and after also, to fetch from them more high matter. But let such curious Carpers, (if any bee) remember the Speech of *Asli-*
34. H. 6. 40 *ton*, * who affirmeth, that euery *Advowson*, and
v. Asliton. right of Patronage, dependeth vpon two Lawes, that is to say; The Law of holy Church, and our Lawes, so that the true determination of such learning, is as hee saith; *Per ius mixtum*, by both Lawes; that is, Ecclesiasticall, and Temporall: And therefore, when wee purpose to seeke the right intelligence, or true vnderstanding of any things in this kind of learning, wee must of necessitie bee beholden to them.

But to returne where wee digressed.

The materiall causes and subiects, in which this learning dependeth, are the things before mentioned. As Churches, Chaunteries, and Chappels presentatiue, and such like.

Churches are of three sorts { Cathedrall, Collegiall, and Parrochiall.

A

A Cathedrall Church, is the seate or Church of a Bishop, and therefore he onely may be said Incumbent thereof.

Colleglall or Conuentuall Churches, are such, as in times past, haue beene in Priories, Abbies, or such like, and are still in Colledges.

Parrochial Churches, are well knowne, and are those, *Ad quem plebs conuenit ad percipienda Sacramenta Baptismatis & Corporis Christi vnde pabulum ad animas sustentandas libere suscipiunt*, for the Incumbent thereof, is onely charged with the cure of Soules. And it is commonly called by the name of *Rectorie*, which is into two sorts diuided, being eyther a Parsonage, or a Vicarage. And so much briefly, for the name, matter, and substance of *Advowsons*. *Ioban. Belloius de etimologijs.* 34. E. 3. *Fitzh. Qu. Imp.* 187.

The former cause or manner of this Inheritance, yeeldeth forth the vsuall and ordinarie distinctions of *Advowsons*, to bee eyther appendant, or in grosse, or part appendant, part in grosse, eyther for a certaine time, or in respect of certaine persons.

The efficient Causes of a Parsonage, are { 1. *Ratione Dotationis.* 2. *Ratione Fundationis.* 3. *Ratione Fundi.*

Ratione Dotationis, is, when hee, or those from whom he deriues his interest, endowed the same Church. 1.

2 *Ratione Fundationis*, is, when he or his Anceſtors, or thoſe from whom he claimes his intereſt, were founders of the ſame Church.

3 *Ratione Fundi*, is, when the Church was built vpon his or their Land, from whomhe deriues his intereſt; or all three together, as appeareth by the verſe, vſed amongſt the Canoniſts.

Patronum faciunt dos, ædificatio, fundus.

Summa hoc ſeruit ius Patronat. The vſuall cauſe or cauſes, why Patronages of Churches are giuen by the Law, and beſtowed vpon Lay-men; is, and were *Vt inducantur laici ad fundationem, conſtructionem, & Dotationem Eccleſiæ.*

The fruit and effect of a Parſonage, conſiſteth in thoſe three things { *Honos.* *Onus,* & *Vtilitas.*

1. *Honos.*

I.

The *Honour* attributed to a Patron, conſiſteth in his right of preſentment. In the diſcourſe whereof, I ſhall afterward conſider, what is required, before the ſame can bee attempted: then what the nature of preſentation is; and laſtly, what is required for the making of a full and perfect Incumbent.

Before the preſentation can bee lawfully made, it is meet that the Church become void, and of avoidance, our Law taketh notice, the ſame being triable thereby.

The

The manner and meanes how an Avoydance groweth, is eyther Temporall, or Spirituall.

1 Temporall, by the Death of the Incumbent. 1.

2 Spirituall, and this is in diuers manners; that is to ſay, by Reſignation, Depriuation, Creation, ſeſſion, and entrie into Religion. 2.

As touching preſentation, we are to ſee; firſt, what it is, then who ſhall preſent, afterwards what perſon may be preſented, and laſt of all in what manner the ſame muſt be done.

Thoſe things, that are required to make a perfect Incumbent, after the preſentation had, dependeth vpon the Dutie of the Ordinarie; As firſt, Admiſſion, which requireth examination of the Clarke, whereupon ſometime enſueth a refuſall, and thereupon, either notice, or no notice (as the caſe requireth) is to be giuen to the patron.

If the Clarke be admitted, then, he muſt bee inſtituted, wee are then to ſee, what Inſtitution is, and what is the effect thereof, vpon which ought to enſue Induction thereinto, likewiſe we muſt ſee, what it is, by whom it is to bee performed, and what it doth import.

If the Patron be remiſſe, and doth not preſent within the time limitted, then incurreth the lapps of the Patron, to the Biſhop, and from the Biſhop, to the Metropolitan, and from him to the Crowne, where it reſteth, but if the

Biſhop

Bishop take his time, then is his presentation a Collation, and in the right of the patron himselfe.

Onus. 2 The second effect of a personage, (which is *Onus*,) resteth onely in the defence of the Churches possessions, to which the Patron and Ordinarie by aide prayer, are to bee called by the Incumbent, for the defence of the same, to auoid such charges and incumbrances, as are vnduly laid thereupon.

Vtilitas. 3 As touching the third, which is *Vtilitie*, we haue not any thing to doe with it, in our law, but we must leaue the Consideration thereof, to the Cannon law, for this Vtilitie is imployed for the sustentation of the patron; for if hee or his posteritie being patrons doe fall to decay, then the incumbent of the fruites of the Church by compulsarie Censure, of the Ordinarie, according to that law, is to be enforced to make Contribution to them.

Breuia. All writs concerning this kind of Inheritance are either giuen to the patron, or Incumbent.

Writs giuen to the Patron are of two sorts, for either he demandeth his inheritance, or presentation, against the possessor, of the patronage, or hee attempts suit against the Ordinarie, for either not doing, or doing his Duty vnduly.

In euery action brought against him that pretendeth possession, it is to be intended, that eyther he is lawfully or vnlawfully possessed.

The

The vnlawfull possessor, is the vsurper, against whom onely lyeth three Writs, which the Statute speaketh of, namely; One of the right, as the writ of right of Advowson, and the other two of the possession, as a *Quare Imp:* and Darraigne presentment.

Against the lawfull possessor, lyeth the writ of *Dower*, for the wife of him that Dyed seized of such estate as she might be endowed of, and a *Cessavit* of the land against the Tenant. 33.H.6.34 b. & 35.a. att.

But no Formedon lyeth for the issue in taile in Discender, nor for any in the remainder, nor for the Donor in the reuerter; for that, that if the *Advowson* be in grosse it cannot properly be discontinued, and being appendant it is to bee recontinued by the same meanes, that the land to which it is appendant, is to be recovered. 13.E.3.15. b. 33.H.6. 33.a. 5.H. 7.36.b.37. a. Fitzh. Ie. br.a.17.b.

The Incumbent as touching his right for his Rectorie, hath the onely Writ of *Iuris utrum*, and for his possession, any other possessarie action. For if another happen (during his presentation) to be presented by the same Patron, or doe come into the same Church, by course of the Law, so that the patronage commeth into Debate, their lyeth a spoliation, it being a suite in the *Spirituall Courts*,

Lect. 2.

The Right that both the Patron and Ordinarie hath ioyntly to intermeddle with the Church.

IN the former Lecture or Reading, hauing deliuered in the proiect, a Diſcourſe of *Advowſons*, briefly diſcouering their Name, nature, Diuiſions, conſequents, cauſes, effects and Incidents of the Patronage: Now it remaineth in like manner to proſecute euery of thoſe parts, then but pointed at, with a more large and ample explication.

First therefore, it is to be conſidered, that in euery Benefice three perſons haue intreſt. That is to ſay, the Parſon hath a Spirituall poſſeſſion. The Ordinarie to ſee the Cure ſerued; And the Patron hath *Ius preſentandi*.

12 *H* 8. 7. *b. per Pollard.*

Hence it is that I haue ſaid, that a Patronage is a right of preſentation; therefore it is called, *Ius Patronatus*; not a power, nor an authoritie onely, but a right, intreſt, or an Inheritance: The word *Ius* or Right, is diuerſly intended, ſometimes ſtrictly, to ſignifie what is left a man, when that, that was once his owne is wrongfully taken from him, as by *Diſſeiſin* or ſuch like.

Com. 284. *a*

Com. 487. *b*

In which ſence, the word *Droit* and *Tort*, are *priuatè oppoſita*, and is thus deuided; to be either

Bracton fus.

ther right of Action, or right of Entrie; ſometimes, in a more ample ſignification, as *Ius habendi, ius poſſeſſendi, ius diſponendi*, by which occaſion I purpoſe at this time to diſcuſſe, whether the Patron and Ordinarie haue right in the Rectorie or Benefice, and what manner of right it is that they haue; their right is called *Collaterall*, as wee read, and not *Habendi*, nor *poſſeſſendi*, nor *retinendi*; for none of them, can haue, retaine, or poſſeſſe the Church or Rectorie, but their right is, *Ius Diſponendi*, wherein euery of them hath a particuler Charge to the poſſeſſions of the Church, ſo free as that hee may maintaine ſuch a one as is thereinto to be preſented.

That they haue a kind of Diſpoſition in them, it is proued by many reaſons: 1. No charge can be founded to be laid vpon the Church in perpetuity: to bind their ſucceſſors, but the Patron and Ordinarie muſt be made parties thereunto as all our bookes agree, and *Littleton* giues a notable reaſon for it. W^ch^ is, that if the Charge be perpetual, the conſent of all 3. ought to concurre, of which enſueth thus much, that if a writ of Anuitie be brought againſt the parſon, and he prayeth in aide of the Patron and Ordinarie and the Patron maketh default, and the Ordinarie appeareth, and confeſſeth the action; or if the Ordinarie make default, and the Patron appeare, and confeſſeth the action, that this Anuitie ſhall not

2. *H.* 7. 36. *Ratio* 8.

12. *H.* 8. 7. *b*

bind the ſucceſſor: but if they both appeare and one of them confeſſe the action, and the other ſaith not any thing, it ſhall bind the Rectorie in perpetuitie. For *Qui tacet conſentire videtur.* But if the Parſon onely with the conſent of the Ordinarie for Tythes or other conſideration executorie, charge the Church in perpetuitie, it ſhall bee good, without the conſent of the Patron, as well as if the conſideration executorie had remained.

3. Secondly it followeth, that the charge of the Parſon, Patron and Ordinarie, ſhall bind in like manner as their intreſt is. But if a man haue an *Advowſon* for yeares, and the Parſon by the conſent of ſuch Patron and Ordinarie, grant rent charge in fee, if the Parſon dye within the terme, & the termor of the *Advowſon* preſents another, & the terme expireth, *Quere* if then the Anuity ſhal be deliuered, but it ſeemeth by ſome that it ſhall be deliuered; for that, that this Incumbent was not the party, that made the grant, and therefore he ſhould not hold it charged any longer, then during the intreſt of the Patron.

And therefore if two joyntenants in common, or parceners be of an *Advowſon*, who agreeth to preſent by turne, if the perſon ioyne in grant of a rent charge in fee, with one of them, the Parſon ſhall bee charged and alſo his ſucceſſors (*alterius vicibus*) for euer; becauſe, thoſe ſucceſſors (that commeth in) by him that made

the

the Charge, ſhall bee ſubiect to it onely, and thoſe that commeth in by the preſentation of the Patron, that neither ioyned nor confirmed, the ſame ſhall hold their land diſcharged for euer.

Alſo, ſuch Anuitie with which the Rectorie is charged, doth not properly charge the Land but the Parſon; for, if the grantee enter into any part of the Gleebe, hee ſhall not ſuſpend the rent or anuitie.

And if the Parſon, Patron, and Ordinarie, ioyne in a graunt of an Anuitie to *S. H.* and his heires, except they ſpeake of the ſucceſſors of the parſon, and that the ſame be granted for the parſon and his ſucceſſors, this cannot be good longer then forthe time, that the parſon that granted the ſame, continueth Parſon; for an Anuitie is nothing but a parſonall Dutie, and no otherwiſe. And if ſuch an Anuitie bee granted ouer, it is not needfull to haue Atturnment; all which proueth, that the ſame chargeth not the Land, but the Parſon; yet neuertheleſſe, the parſon is charge, for if the Grantor aſſigne or be remoued by any meanes whatſoeuer, the charge followeth not his parſon, but reſteth vpon his Succeſſors, and the Iurie may bee taken of the Towne where the Church is, which proueth that ſuch graunt chargeth the parſon in reſpect of the Land. 21. *H.* 7. 4.

Moreouer, when the Patron and Ordinarie, confirmeth the graunt of the Parſon, it is requi-

ſite that the Confirmation be made during ſuch time, as he is Incumbent that made the Charge; for if hee Die, be remoued, reſigne, or otherwiſe be depriued before the confirmation, ſuch Confirmation is voyd notwithſtanding.

If an Incumbent grant rent charge, to begin after his Death out of his Rectorie, and the Patron and Ordinarie confirmeth the ſame, this is good for ſo long time as it is graunted.

Ratio, 2. The ſecond principall Reaſon, to proue the intreſt they haue to the Church or Rectorie, is, that all three may charge the Church in perpetuitie, ſo may the Patron and Ordinarie doe onely in time of vacation, which charge ſhall bind the Succeſſor for euer. Becauſe none hath intermedling with the Rectorie, but the Graun-tors aforeſaid.

31. *E.* 3. *Graunt* 90. *Annuitie* 53.

Ratio, 3. The third principall reaſon; is this, that as the Patron and Ordinarie in time of vacation, may charge the Church in perpetuitie, ſo they may make a releaſe, by which any Anuitie that chargeth the Church or Rectorie ſhall be extinguiſhed, euen in the time of vacation.

Fitzh. Releaſe. 57. *Iur ven.* 6. 33. *aide le Roie*, 103.

Alſo, if a man hath an Anuitie out of the Church of *S.* and afterward this Church is vnited to the Church of *D.* and after the vnited Church becomes void, if the Grantee releaſe in time of vacation to the Patron, that was patron of the other Church; that is to ſay, of *D.* and to the Ordinarie, ſuch releaſe ſhall not diſcharge

7. *H.* 6. 38. *b* 8. *H.* 6. 24. 21. *H.* 7. 44

the

the Incumbent, becauſe, it was not made to the Patron of the Church that was firſt Charged, for although both the Churches are vnited and become one, yet are their patronages diſtinct and ſeuerall; moreouer, that Intreſt, that the Patron and Ordinary hath in the Rectory, is but Collaterall and *ius diſponendi*, and no otherwiſe, as hath beene formerly ſaid.

For if an *Advowſon* diſcend to an Infant, and the Incumbent bee impleaded in a writ of Anuitie, and prayeth ayde of the Patron and Ordinary, and for that, that the patron is within age, likewiſe prayeth that the *Parol* may demurre vndiſcuſſed during his nonage, this ſhall not bee granted; but the Infant in ſuch caſe ſhall bee ouſted of his age, becauſe the charge lyeth vpon the parſon, and not vpon the patron, or Ordinary, who are not at any time to inioy the Rectory themſelues, but onely are to haue the diſpoſition thereof. 7.*H.*4.16.*a*

Finally, to proue that it is meerely Collaterall: If the patron & Ordinary doe nothing but giue licence to the perſon to charge his Rectory with an Anuitie, this ſhall bee a good grant to Charge the Church in perpetuitie. For that, that it is not to any other free tenants a Charge, but to the parſon; becauſe neither the patron, nor the Ordinarie can haue the Church themſelues, but onely to diſpoſe and beſtow the ſame, vpon ſome other; neuertheles, ſuch aſſent ought to be by writing. 11.*H.*5.7. 8.*b*.14.*H.* 8.31.*a*.

LECT. 3.

The ſeuerall Intreſts of the Patron and Ordinarie, and what it is.

IN the Lecture next before, I haue ſet forth to you the right that both the Patron and Ordinarie hath joyntly to intermeddle in the Church; Now it remains, likewiſe that I declare their ſeuerall Intreſts: Therefore at this preſent, I intend to deliuer ſomthing touching the Collateral Intreſt of the Patron ſole, and after to examine, what manner of Inheritance an *Advowſon* is, and ſo to referre the Intreſt of the Ordinary ſole to a more conuenient place when as we ſhall come to ſpeake of Admiſſion and Inſtitution.

What Collaterall Intreſt alone, the Patron hath in the Church, may in briefe thus be decyphered; firſt, by the Common Law, (before the Statute of *Weſtminſter* ſecond,) as hee ought by the opinion of ſome men, to bring his writ of *Advowſon*, of the firſt part or any leſſe part of the Tythes and oblations of the Church in any ſuite of *Iudicauit*, attempted againſt the Preſentee, or Incumbent, that hath ſued in the *Spirituall Court* for the Recouerie of the ſame, and hath cauſed the Patronage in this reſpect, to come into queſtion,

Fitzh. 30. *b*

queſtion, or as ſome men thinke he might haue had his Writ of *Heres*, as a *Precipe quod reddat advocationem quinque acrarum terræ*, or one acre of Land and ſuch like; For which cauſe the Statute was made, to be a reſtraint for bringing the ſame writ, of any leſſe part then of the fourth part of their Tithes; ſo that the Statute in this behalfe, was but a reſtraint of the Common Law: Which argueth, that the comparing of the Rectorie, tendeth Collaterally to be an impeachment and preiudice to the Patron himſelfe, and ſo importeth a Collaterall Intreſt that the Patron hath to the Church. Againe, by the graunt of the Church the *Advowſon* paſſeth; wherefore *Herle* layd in the firſt part of *Ed.*3. That it was not long ſince, when men knew not what an *Advowſon* was nor meant, but by the Graunt of the Church, they thought the Advowſon to be ſufficiently conueyed in the Law; For, ſaid hee, when they purpoſed to aſſure an *Advowſon*, their Charter ſpecified it in the guift of the Church. 38.*H.*6,20 *a.Per Fortescue.* *Com.*157.*b*

Moreouer, the King being Patron, hath often ratified and confirmed the eſtate of the Incumbent in a Rectorie, that an vſurper had preſented; by meanes whereof, hee cannot remoue the ſame Incumbent, vnleſſe for ſome cauſe hee repeale his Charter of confirmation. 45.*E.*3.19.*b* 32.*H.*6.32 *a.* 7 *H.*4. 13,*b.*

Notwithſtanding, if the King recouer by a *Quare Imp:* and after confirmeth the eſtate of

Fitzh fol. 34. *f.* 9. *E.* 3 the Incumbent, that the vsurper presented, by meanes whereof, hee cannot be removed; at the next Avoidance the King shall present, for the Iudgement giuen for him was not at any time executed, which also proueth the Collaterall Interest, that the Patron hath to the Church; for no parsons can lawfully confirme, but such as haue right to the thing confirmed.

43. *E.* 3. 16. 20. *E.* 4. 15. *b* 5. *H.* 7. 17. *b* 6. *H.* 7. 3. *a.* 12. *H.* 7 16. *a* 26. *H.* 8. 2. *a* Ancient Bookes haue held, and that not without reason; That an *Advowson* hath such an affinitie with the Church it selfe, to which it is granted, and to which it is a Collaterall Interest (as hath beene sayd) that it should passe by Liuerie of seisin, made at the Ring of the Doore of the Church; and although by such meanes it passe not at this day, being meerely a thing that lyeth in Graunt; yet the same proueth the Collaterall Interest of the Patron to the Church; for this opinion holden in the Bookes, is granted for the like reasons.

33. *H.* 6. 34. *b.* In a Writ of right of *Advowson*, the Parson shall bee summoned in the Church, or at the doore of the Church; And if a *villeine* purchase an *Advowson* in grosse, (*Littleton* saith) full of an Incumbent, the Lord of the same *villein* may come to the same Church and their claime, and the *Advowson* shall be in him; All which things added to the former, sufficiently proueth the Collaterall Interest that the Patron hath to the Church.

Lect. 4.

What manner of Inheritance an Advowson is.

WEE are now to consider, what manner of Inheritance an *Advowson* is; wherfore, let vs consider, that euery Inheritance, is eyther: 4.

Hereditas { *Corporata*, or *Incorporata*.

Hereditas corporata, is a Meadow, Messuage, Land, pasture, Rents, &c. that hath substance in themselues, and may continue for euer. *Com.* 176. *v*

Hereditas incorporata is, Advowsons, Villeins, Wayes, Commons, Courts, Piscaries, &c. which are and maybe appendant or appurtenant to Inheritances Corporate.

An *Advowson* therefore is Incorporate, of which a man may be Seised, though not of *Demesne*, yet as of Fee, and as of right.

And although great Disputation haue beene in our bookes, whether an *Advowson* may bee holden or lye in tenure, yet the most authorities concurreth and are, that any *Advowson* either in 21. *E.* 3. 5. *a* 40. *E.* 3. 44. *b.* 42. *E.* 3. 7. *b.* 1. *H.* 4. 16. *a.* 33. *H.* 6. 34. *b.* 5. *H.* 7. 37. 14. *H.* 7. 26. *a.* 15. *H.* 7. 8. 43. *E.* 3. 15. *b* 33. *H.* 6. 35. 5. *H.* 7. 33. *b.*

grosse or appendant, lyeth in tenure, aswell of a Common person, as of the King. For a *Cessauit* lyeth thereof, and some haue holden that the Lord of whom it was holden may distreine (either in the Church yard, or in the Gleebe) the beasts of the Patron onely, if they happen to be there found, 33.*H.*6. *Godred* contrarie: but though the law be, that there cannot bee taken any distresse, yet the same makes not any impeachment of the tenure, and being parcell of a Mannor or appendant to it; it may bee holden as some bookes are, *pro particula illa.*

33.*H* 6.35 *b.* 5.*H.*7. 37.*b.*15.*H* 8.*a.*

14.*H.*4.2.*b*

Therefore it is holden and said, that an *Advowson* is a tenement, and therefore whereas the King hath giuen licence to an Abbot to amortise lands and tenements to such a value, by force whereof he purchaseth an *Advowson*; and this was holden good, sufficiently pursuing this licence, and therefore in the booke an issue was taken, if the same *Advowson* were holden in *Capitie*; and therfore, if a man grant a Ward, or *Omnia terra & tenementa*, that he hath by reason of his Ward, if there be an *Advowson* holden of the Lord, being guardian the same passeth to the grantee, by the words of *Omnia terras & tenementa.*

5.*H.*7.37. *Ow.*38.*b.*

Of an *Advowson* a *precipe quod reddat* lyeth very well, and a writ of *Dower* shall bee maintained of the same, by the wiues of such as haue such inheritance therein as giueth a dower, as

20.*E.*4.15.*b*

before

before hath beene ſaid, and ſo the husband of her that hath the inheritance in it ſhall be tenant by the Courteſie, although there neuer were had any preſentation by the wife to it. 5.*H*,7,38. 15.*H*,7,18 *a*. 7,*E*,4,6. *Fitzh*.293, 149.*d*.3.*H* 7,8,*a*.

But yet there ſhall not be any diſcent thereof, from the Brother to the Siſter, of the entyre blood, by the maxime of *poſſeſſio fratris &c*. But the ſame ſhall diſcend to the brother of the halfe blood; vnleſſe, the firſt haue preſented to it in his life time, but if hee haue preſented in his life-time, then it ſhall diſcend to the next heire of the entire blood. 19.*E*.2. *Fitzh. Quo. Imp*.177.

In *Advowſon* is an inheritance and cannot be deuided into parts or parcels, for in a writ of right of *Advouſon*; if the tenant ſay, that the demaundant is ſeaſed of the ſixt part of the *Advowſon*, this ſhall abate the whole writ, and yet part thereof may be in ſome ſort conſidered, for there is an vſuall difference taken, betweene *Advocatio medietatis Eccleſiæ*, and *medietas Advotionis Eccleſiæ*.

For *Advocatio medietatis Eccleſiæ*, is where two Patrons be, and euery of them hauing right to preſent a ſeuerall Incumbent to the Biſhop, to be Admitted into one and the ſame Church, for diuers may be ſeuerall parſons, and haue cure of Soules in one Pariſh, and ſuch *Advowſon* is a like in euery of thoſe Patrons, but euery of their preſentments is to the moitie of the ſame Church; and therefore it is called *Advocatio* *Fitzh*.3.*b*. 32.*H*,6,11 *b*.14.*H*,6. 15.*b*.*Fitzh*. 30.*v*.

medietatis Ecclesiæ, or as the cause falleth out, *aduocatio tertiæ partis Ecclesiæ*, and the like.

7.E.3.30.b Fitz.b.32.b. 34.H.6. 35.b.33. 2.6.11.b. 5.H.7.7.b. But *Medietas aduocationis Ecclesiæ*, is after partition betweene perceners, for although the *Advowson* bee entire, amongst them, yet any of them being disturbed to present at his turne shal haue the writ of *Medietate*, or of *Tertia*, or of *Quarta parte Advocationis Ecclesiæ*, as the case lyeth.

14.H.6 15 b. Fitzb.11 br.39. Also, if two Patrons of seuerall Churches make vnion, or confederation, of their Churches by the assent of all those whose consent is requisite, the patronage of euery of them shall not be but *medietas Advocationis Ecclesiæ*; because, but one Incumbent is onely in this case to be presented, and not *Advocatio medietatis Ecclesiæ*.

And this Difference is onely taken and obserued in the writ of Right, which is altogether grounded vpon the right of Patronage. But in the *Quare Impedit*, which is onely to recouer Damages, no such diuersitie is considered, but the writ is generall, *Presentare ad Ecclesiam*.

Lastly, it is to be considered, what temporall profits, value or Commoditie, this kind of Inheritance is reputed to be of: It is not by the Law of God, to be bestowed vpon any Incumbent for any need or price; but onely reserued for such as are worthy thereof. And therefore it

29.E.3.5. b.9.H.6. 57.a.32. H.6.22.a. is said; * That Guardian in Socage of an Infant,

fant, ſhall not preſent to any *Aduowſon*; becauſe ſuch preſentation, is not to bee beſtowed for price; for that, that ſuch Guardian cannot account for the ſame, yet neuertheleſſe, becauſe the Patron thereby may aduance his friend, it hath beene often eſteemed for Aſſets in Formedon. 5,*H* 7,36. *a* 37,*b*,12. *H*,8,*a*.

And as the value thereof may come in queſtion, as in a writ of right of *Advowſon*, where the tenant avoucheth, and the vouchee looſeth, the tenant ſhall recouer in value againſt the vouchee, for euery Marke that the Church is worth *per Annum*, xij.d. So that the thing which of it ſelfe is not valuable, is by a ſecondarie meanes made and eſteemed valuable; becauſe that otherwiſe, this miſchiefe ſhould enſue thereof, which ſhould be a loſſe without recompence. 8,*E*,3. *Fitzh*,*recouery in value* 11,*&* 9.

1. By this it appeareth, that it is an Inheritance Incorporate.

2. That it lyeth in Tenure.

3. That it paſſeth by the name of Tenement.

4. That a *precipi quod reddat* lyeth thereof.

5. That both tenant in Dower, and tenant by the courteſie, and in ſome caſe a *Poſſeſſio fratris*, may bee thereof.

6. That it is entire by nature, though by accidentall meanes otherwiſe, and in ſome reſpect deuiſable.

7 Though it be beſtowed *gratis*, yet it is valuable, for which it is a benefit to aduance a friend, and for being iniured therein we ſhall recouer damages.

Lect. 5.

The word Right, and the word Advowson explained, and to what inheritance an Advowson may bee appendant originally.

IT resteth at this present, for the more ample explication of this word *Right*, (whereas in defining an *Advowson*, wee say it maketh a Right) to set forth the diuisions of *Advowsons*, and to prosecute euery part deuided with a full Discourse; that thereby, what manner of right and inheritance an *Advowson* is, may be the better perceiued.

Advowsons therefore, are either appendant or in grosse, or part appendant part in grosse.

An *Advowson* appendant, is a right of Patronage, appertaining to some corporall Inheritance; so that, hee that hath the same Inheritance, is thereby also entituled to haue the other as annexed to the same; For an *Advowson* passeth alwaies with the Inheritance, to which it is appendant; vnlesse, there bee expresse nomination onely by these words (*Vna cum pertinentijs,*) except it bee in case of the King, where the Statute *De prerogatiua Regis, cap.* 15. prouideth expresse words to make the same to passe.

33. *H.* 6. 4. *Lit.* 20. *E.* 4. 15. 4. 8. *H.* 7. 4. *b.*

The originall of *Advowsons* appendant at the begin-

beginning muſt be in this manner, ſythence Patronages were wonne and gotten as before hath beene declared; and that either *ratione fundationis dotationis* or *fundi*, were (as it ſeemeth by all conformity of reaſon) the originall foundations of Advowſons appendant; for when Mannors were created, either the land vpon which the Church was built was land parcell of the Mannor, or honor to which it is appendant, and he that was Donor thereof, gaue the ſame to build the Church vpon, and that the *Advowſon* of the ſame Church ſo built, ſhould bee appendant to the ſame Mannor, which is *ratione fundi*. *Com.* 161.a 5.*H.*7.6.

Or hee that was owner of the ſame Mannor or of any ſuch corporall Inheritance, endowed the ſame Church with parcell of the land of the ſame Mannor, honor, or ſuch like corporall Inheritance, and gaue the ſame to the Gleebe, of ſuch Chuch vpon which the *Advowſon* by ordinance of the Ordinary, and by the conſent and agreement of all others, whoſe conſents were requiſite in this behalfe, was at the beginning appointed to be appendant to ſuch Mannor, Honor, or other corporall Inheritance, in recompence of ſuch liuely hood, and dotation beſtowed vpon the Church.

And hereof it enſueth, that if at any time the Church bee deſolued, the Gleebe and land vpon which the Church was built, ſhall returne and 5.*H.*7.37. *a* 13.*a* 11. *E.*4 11.*v.*20 *E.*4.15.*b*.

eſcheate to him or them from whom it was deriued and deduced.

Fitzh. 33.*k* As in like caſe, vpon the diſſolution of an Abbey, the ſame ſhall not returne to the founder of common right, vnleſſe ſome other ordinance be made to encounter the ſame.

1. Therefore to auoyd confuſion in the conſideration of *Advowſons* appendant; let vs firſt ſee, to what ſort of Inheritance *Advowſons* may be properly appendant.

2. Secondly, in what manner it is appendant, (that is) if it bee part or parcell of the Inheritance to which it is appendant, or if as accident or neceſſarie thereunto.

3 How it may bee ſeuered from his principall; and againe, by what meanes it may bee thereunto reconſtinued againe.

1. As to the firſt, it may be appendant properly and originally, to things that are onely Inheri-

Com. 170.*v* tances corporall, that are compound; As to an

10. *H.* 7. 19 Honour, Earledome, or ſuch like; likewiſe, to a Caſtle, more vſually to a Mannor; all which principall things, that is to ſay, the Earledome, Honour, Caſtle and Mannor, &c. are Inheritances compound, made and combined of diuers things, and in nature different, being thoſe which the Logicians call *Tota Intigratia.*

2 It may bee appendant to an Acre of Land, or to a Meſſuage, to a Rectorie, Parſonage, Church or ſuch like; And ſo one Church may bee

be appendant to another, of which we shall take occasion to speake in the Lectures following.

But at this present, let vs see in what sort it may be appendant to a Mannor.

Advowson that lyeth in one Countie, may be appendant to a Mannor that lyeth in another Countie; And how two or more *Advowsons* may be appendant to one Mannor, may be manifested thus. 33. *H.* 6. 4. *b. lib. vlt.* 34. *E.* 3. *Quare Imp. Fitzh.* 16.

If hee that in Ancient time was seised of a Mannor, that extended so large as it was diuided into diuers Parishes, the Lord of the same Mannor, eyther gaue out of the same Mannor land to build, or to endow euery of the Churches; and so euery of them might be appendant to the same Mannor.

How one *Advowson* may bee appendant to two Mannors, may likewise thus appeare.

Suppose that *A.* be Seised of an *Advowson* of the Church of *Dale*, as appendant to the Mannor of *Sale*, and that both those Churches by the Ordinarie, and by the consent of both the Patrons bee vnited, and called the Church of *Dale*, and ordained that the Patrons shall present by turne for euer; these Churches by this vnion and confederation are made one, and so the *Advowson* entire, and no moities as is betweene Coperceners, joyntenants, and tenants in common; and therefore it is appendant to both Mannors, for the Patrons seuerally presenting, 9. *E.* 6. 5. 9. *b.* 20. *Dyer.*

ting, ſhall preſent to the ſame Church as appendant to both Mannors, (that is to ſay) the one ſhall preſent ſeuerally to the Church as to his Mannor of *Dale*, and the other alſo ſhall preſent thereto when his turne commeth, as appendant to the Mannor of *Sale*.

Yet ſome are of opinion, and ſome authorities there are, that each of the ſame Patrons after the ſame vnion, is ſeiſied *De medietate Advocationis Eccleſiæ*.

14 H. 6. 25 b. Fitzh. 39

And in what manner ſoeuer the ſame *Advowſon* be entire, yet is the Parſons intreſt ſeuerall; For if ſuch Incumbent, which is preſented after ſuch vnion made, graunt a rent charge out of the Gleebe, and one of the Patrons onely confirme, no Diſtreſſe (after the Death of the Incumbent that granted the rent) can bee taken vpon the Gleebe, that belongeth to the Gleebe of the other Patron, to make the ſame ſubiect to the charge in perpetuitie; for that, that hee confirmed not.

But if the Mannor of *Dale*, bee holden of the Mannor of *Sale*, and to the Mannor of *Dale* is an *Advowſon* appendant, and that the Mannor of *Dale* hath Eſcheated to the Mannor of *Sale*, ſo that the Demeanes of the one is become parcell of the Demeanes of the other; yet the *Advowſon* ſhall be ſtill ſaid appendant to the Mannor of *Dale*, as it was at the firſt; And the Mannor of *Dale* ſhall continue ſtill in reputation a

22 H. 6. 54. b.

Man-

Mannor, in respect of such things as are appendant therevnto.

The moitie of an *Advowson* may bee appendant to a Mannor, or parcell of a Mannor. 33.H.6.11 12.a.

Also, in the pleading of a case in *Ed. 6.* by *Dyer*, it appeareth that one fourth part of an Advowson was alledged to be appendant to the one moitie of a Mannor, and another fourth part of the same Advowson was appendant to the other moitie of the same Mannor, and the other two parts were in grosse: yet neuertheless an Advowson (in euery such or the like cases) cannot be said to be diuided properly, for that, that it is entyre, if you respect the presentation and not the right of Patronage. For if a man hath an Advowson and giueth one part thereof to *A.* and the other part to *B.* & one third part to *C.* yet the Advowson remaineth entyre amongst them, and if any of them disturbe his companions they are without remedy, for that they ought to ioyne in a *Quare Impedit*, because the presentation is a parsonall thing, and entyre, wherein they ought to agree; but seeke how they can sue her in these causes in a writ of Advowson. 6,E.6.74,b 44.Dyer.

Moreouer, as touching the right of Patronage, if one bring a writ of right of Advowson, and the tenant pleadeth that the demandant is seised of one sixt part, or of some one part of the Advowson, the entyre writ shall abate, notwithstanding if it be in barre but for parcell, be-

cause the Advowson is entyre, and not seuerall, by reason wherof the demandant cannot abridge his demand.

18,E.3,15. And as in the cases aforesaid it hath appeared, that an Advowson of a Church may bee appendant to a Mannor, in like manner may the Advowson of a Priorie bee appendant to a Mannor.

Lect. 6.

To what things an Advowson may bee appendant secondarily.

IN the Lectures aforesaid, was shewed, to what sort of Inheritances an *Advowson* may bee appendant originally; Now it remaineth to show to what things it may bee appendant secondarily.

41,H.4. *Fitzh* 88. 33,H.6,5. *a. fine.* An *Advowson* therefore cannot bee appendant to one Acre of land, or two acres, but only to such parcels of land as haue beene parcell of a Mannor, or parcell of any Earldome, Castle, or such like Inheritance, to which an *Advowson* may bee appendant originally; But in what order the same may bee appendant to one Acre, let vs consider; some bee of opinion, that if a man be seised of a Mannor to which an *Advowson* is appendant, giueth certaine acres of

5,H.7,10.a *Fitzh. feoffments and feof.*115. the

the ſame Mannor, *vna cum Advocatione* to another, in ſuch caſe the *Advowſon* ſhall not paſſe, to the grantee, vnleſſe the ſame be by Deed, and ſo the ſame ſhalbe appendant to the ſame Acres.

So likewiſe, ſome hold opinion, that if a man be ſeiſied of a Mannor, to which an *Advowſon* is appendant in right of his wife or Ioyntly with his wife, and maketh a feoſement in fee of certaine acres parcell of the demeanes of the ſame Mannor *vna cum Advocatione*, and dieth; that the wife notwithſtanding this, may preſent to the *Advowſon*, before ſhe recontinue the ſame acres, by *Cui in vita*; becauſe (as they thinke) the ſame *Advowſon* is not appendant to the ſame Acres, and ſuch alienation is not but during the life of the Husband. 17.*E.*3.45 18,19,21, 22.*E.*3.6.*b* 7.*a.Thorpe.*

Neuertheleſſe, I doe not perceiue any great reaſon, why the Law ſhould be ſo in ſuch a caſe; for if a tenant in tayle of a Mannor, to which an *Advowſon* is appendant *aliene* ſome of the ſame Acres parcell of the Mannor, together with the *Advowſon*, although it bee without Deed, notwithſtanding it is appendant to the Acres, and cannot be recontinued but by Formedon to be brought for the ſame Acres, which caſe in reaſon, being like to the Formedon of the Acres and *Advowſon* aliened by the husband, I know not any difference of Law that ſhould bee betweene them; And therefore, if a man bee ſeiſied of a Mannor to which an *Advowſon* is appendant *Fitzh.*32.*a* 43.*E.*3. 26.*b or.v. Thorp.*

dant and make a leafe for life of the fame Manor, *vna cum advocatione*, if the leffor enter into the fame Acre of land for forfeiture, hee hath recontinued the *Advowſon*, as appendant to the fame Acre.

17.E.5.a. *Membrey*

*Com.*170 *b.* 16.*H.*7.13 *b.* 3.*E.*9.*b.*

An *Advowſon* cannot Originally bee appendant to a Meſſuage, but Secondarily it may; therefore if an *Advowſon* be appendant to a parcell of land, which was ſometimes part of the demeſnes of a Mannor and ſuchlike, if a Meſſuage be built vpon the ſame parcell of land, the *Advowſon* ſhall be appendant to the ſame Meſſuage, and if the ſame Meſſuage fall or bee pulled downe, the ſame *Advowſon* ſhall bee againe appendant to the Soyle, as it was before.

17.*E.*3.51.*a* 20.*E.*4.6.*b.* 11.*H* 6.32.*b* 5.*E.*2. *Qu. Imp.*165.*&* 178.7.*E.*3 13.*a.*51.*a.* 16.*E.*3.*tit. d'faits*, 11, 6.5.*E.*3.26 *b.*11.*H.*6.18 *b.* 31.*H.*6. 14.*a.Finch.* 33.*v.t.*34. *&* 35.*f.*

So likewiſe, an *Advowſon* may by a ſecondary meanes be appendant to a Rectory, for Vicaridges being not firſt erected (in as much as the Subſtitute cannot bee before the principall) but all at the beginning were Parſonages, of the which Vicaridges were deriued, and that for the moſt part, by the reaſon of many Impropriations of benefices, to the houſes of Religion, and Spiritual corporations, which were not of themſelues in all points fit for the function and cure of ſoules.

The reaſon is, becauſe that the *Advowſon* of a Vicaridge ſhould bee alwayes appendant to the Rectory of a Parſonage, ſo that he that

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is Parson, or *Persona imperſona*, (as they call him) of this Church, is of common right Patron of the Vicaridge, of the same Church; except, some other seuerall ordinance at the beginning of the endowment of the same Vicaridge were made to the contrary.

And therefore, by the graunt of a Parsonage with all the hereditaments thereto belonging, the *Advowson* of a Vicaridge passeth to the Grantee. 2.E.3. *Grants*, 89. & 56, *Dyer* 35, 7.E.4. 61.a, 75.a.

In the same manner it should be, if the Vicaridge were endowed, so there be a Parson and a Vicar both presented into one Church, as by the Law there may well be; but if the Vicaridge become voyd, and hee that is Parson hauing the *Advowson* of the Vicaridge (as of common right hee ought) present one to the same Vicaridge by the name of Parson, who is admitted and Instituted accordingly, by such presentation hath the same Vicaridge lost the aforesaid name, and is becommed a Parsonage, *tamen quere* if the first Parsonage remaine, and if one of those parsonages (if they both continue) be appendant to the other; but it seemeth by the Booke of 11. *H.6.* that there should be but one Parsonage, and the Vicaridge extinct. 11.*H.6.*18 & 32.*b.* 11.*H.6.*18 & 22.

An *Advowson* of a Church or Chappell, cannot originally bee appendant to another Church or Chappell; for that, that things of 8.*H.7.*16. *Com.*169.*b*

one nature cannot be originally appendant each to other. But notwithstanding, secondarily the *Advowson* of a Church or Chappell may be appendant to another Church or Chappell.

43, E. 3. 30 a. Fitzh. Qu. Imp. 13

As if the *Advowson* of a Church or Chappell bee appendant to one Acre of land, that was sometimes parcell of a Mannor, or such like; and after a Church or Chappell bee built vpon it, the last new erected Church shall bee appendant to the aforesaid Church.

33. E. 3. Fitzh. title Roy, 103.

An *Advowson* may be amortified to a Church or Chappell, and if it be recouered and lost by Default, the parson thereof may haue a Writ of right.

Ibid. Fitzh. 103.

And an *Advowson* may be parcell and part of a Deanerie, and if the same bee in any free-Chappell of the King, if the Deane be impleaded, he may of this haue ayde of the King. And thus much concerning Inheritances, to which an *Advowson* may be appendant.

Lect. 7.

In what manner Advowsons are appendant to a Mannor.

NOw it resteth, that I determine in what manner *Advowsons* are appendant. And first of all, if the *Advowson* be part or parcell of the Inheritance, to which it is appendant, and whether it bee onely accident or incident thereunto. 1.

Secondly, if an *Advowson* be appendant to a Mannor, that consisteth of Demeanes and seruices, in respect both of the demeanes and seruices, or if it shall be said appendant to a Mannor in respect onely of the Demesnes, in as much as the Demesnes are one corporall Inheritance, and such part of the Mannor as onely lyeth in manuell occupation. 2.

1 As concerning the first, the Authorities of our Bookes are diuersly deuided, some tending to one effect and some to another, our best course therefore is to consider the Arguments, and to giue censure with that which seemeth most agreeable with Law. Some hold that an *Advowson* appendant to a Mannor and the like, is eyther part or parcell of a Mannor, Honour, &c. or other Inheritance to which it is appen-

dant. And they ground themselues vpon the au-
Ratio.1. thorities of 43 *R.*3.22.*a b.* where it was adjud-
ged that the grant that King *H.* the 3. made to *The-
nel Marshall* of a Manor, to which an *Advow-
son* was appendant, without these words (*cum per-
tinentijs*) and without any mention of the *Ad-
vowson*; yet notwithstanding, the *Advowson*
passed in case of the King before the statute of
Prærogativa Regis, Cap. 15. And so likewise it
is in the case of a common parson at this day,
although in the 8. *H.*7.4.& the opinion of some
others, in the 5.*H.*7.38.*b.* be against it, vpon
22.*H.*6.33 which they inferre; that an *Advowson* is parcell
lib.fund.leg. of a Manner, for so expressely is the opinion
7°. of others in the same booke of 5.*H.*7.38.*b.*

2. Secondly, in the 9.*H.*6.28.*b.* and in the 38.
Ratio.2. *H.*6,33.*a.* in the Abbeyes of Scyons case, the
difference is agreed for Law, that if the King be
seised of a Mannor to which an *Advowson* is
appendant, and granteth the same Mannor, and
9.*H.*6.28, in the grant the words of the Patent are *dedimus*
or 8.*b.* *& concessimus*, the Mannor of *D.* expressing not
the *Advowson* in the clause of the grant, if after-
ward in the *habendum* there bee, *habendum cum
aduocatione* of the Church of *D.* the *Advowson*
38.*H.*6.33 passeth by such grant, although it be not com-
a.39.*b.* prehended in the clause of the grant; but if the
King grant the Mannor of *D.* to which no *Ad-
vowson* is appendant *habendum cum aduocatione
Ecclesiæ de S.* this *Advowson* passeth not; for
that,

that, that it is mentioned after the grant, the reaſon of which difference they thinke to be, becauſe in the firſt caſe, the aforeſaid *Advowſon* appendant is parcell of the Mannor, which is not ſo in the laſt caſe in the 8. *H.*7. 3. *b.* and likewiſe in the 10. *H.*7. 19. *a.* it is ſaid, that an *Advowſon* appendant is a compound thing, to the compoſition whereof, diuers things are requiſite, all which things commixt, make the Mannor and euery of them is parcell thereof, for as Rent cannot be Land, ſo Land cannot bee an Advowſon *nec econuerſo*, yet euery of theſe things of diuers natures, make the Mannor, and are parcell of the Mannor, ſaith *Keeble*. 10. *H.*7. 19 *a*, Keeble.

And if a man demand a Mannor by his Writ and an Advowſon is appendant thereunto, hee ought to make an exception of the Advowſon, which ſeemeth to proove that an Advowſon is parcell of a Mannor, vpon the other part thoſe which affirme that an *Advowſon* is not parcell, but onely appendant to the Mannor, denyeth that an Advowſon lyeth in Tenure; for that, that only the principall thing is holden, and not the thing appendant to ſuch principall; As Leates, Courts, Eſtreates, Wayſes, and the like, for (ſaid they) if an *Advowſon* appendant be by grant ſeuered from the Mannor, it is holden by ſuch and the ſame ſeruices as it was holden by before, for that, that if the *Advowſon* be ſeuered it ſhould be holden *properticula*, the the Ser- *Ratio.* 3. 5 *H.*7. 36, *a* & 38, *a*

vices ſhould be encreaſed, and ſo double Services ſhould be due for one thing, for ſo he ſhould haue the entyre ſeruices for the Manner, and alſo Seruice for the *Advowſon* beeing ſeuered, which is repugnant to reaſon.

In this varietie of opinions; I thinke it were moſt conformable to reaſon, to ſay that an *Advowſon* is not part nor parcell of a Mannor, but rather appendent to a Mannor, for the better entendment whereof, the Law of *England* calleth thoſe ſorts of Inheritances which are annexed to others, and what the Logicians call *Adiuncta*, by theſe names, that is to ſay; Incidents, appurtenants, appendants, and regardants, of which termes of Law (*Regardant*) is properly of *Villeines*, and the word (*Appendant*) of a Common or an *Advowſon*; of which two an Advowſon is ſeparable, but a common appendant is not in any caſe ſeparable, for none can haue common appendant, but hee onely that hath the Land to which the common appendant is appendant. The other two words *Incidents* and *Appurtenances*, may generally bee affirmed of all thoſe ſorts of Inheritances that may in any manner bee annexed to other things, for ſo a Mannor with his appurtenances, may be intended of Advowſons, Commons, Villeines, Waiſes, Eſtrayes, and the like, which are ſaid to be Appurtenances to a Mannor, likewiſe the word *Appurtenant* may be applyed to a Court,

4.E.4.36.b

Lit. 184.

9.E.4.39.b

5.H.7.

5.H.7.4.b

Court, Meſſuage, or Gardein, that are ſaid to be appurtenant to the Meſſuage, the word incident properly ſignifieth thoſe things annexed which are not knowne by the precedent names of appurtenants or appendants, and yet are notwithſtanding annexed to other Inheritances, and in ſuch ſort a Court-baron is incident to a Manor, a Court of Pipowders to a faire, fealtie to Homage, homage to Eſcuage; ſo likewiſe a *Corrody* is incident to a Founderſhip; and againe, of thoſe ſome are ſeuerable, as the Corrodie from the Founderſhip, ſome are inſeuerable, as the Court-barron from the Mannor, except onely in caſe of the King, who hath power to ſeuer them. But that is called a part or parcell, which is a portion, and required to ſome compoſition of entyre and compound things, as the Demeanes and ſervices are part of a Mannor, the Gleebe and the Tythes are part of the Rectory, ſo that theſe are not to be called Incidents, Appendants, Appurtenants, but parts and portions of theſe compound things, of which they are ſaid to be part, parcell, or portions, and are required neceſſarily, to the framing of ſuch entyre thing, of which they are parts and portions, & hereof it followeth that an *Advowſon* appendant is not any part, parcell or portion of a Mannor, no more then a common is part of that thing to which it is appendant, ſo that the word it ſelfe of an *Advowſon* appendant is ſufficient

21 E. 4. 32. *b*
19. *Aſſ* 10
8. *H.* 7. 6. 1.
E. 4 10. *a.* 18
H. 7 12, *b*
11, *H.* 6. 81
21. *Aſſ.* 53.
Br. incid. 34
12. *E.* 288.

to

to ſet forth and declare the ſame, to bee no part but appendant onely, as the words importeth,

1. *Reaſon Anſwered.* Wherfore the firſt reaſon of the aduerſe part may thus be anſwered. The bookes before mentioned namely, 43.*E.*3.22.*a* 45.*E.*3.12,*b*.22.*H.* 6.33.*a*. which are to this effect, that an *Advowſon* appendant may paſſe by the grant of a Mannor without ſaying *(cum pertinentijs)* in the caſe of a Common parſon, and ſo likewiſe in the caſe of the King before the Statute of *prerogatiua Regis*, proueth not that an *Advowſon* is part or parcell of a Mannor, for this being a thing appendant may aſwell paſſe with the words *(cum pertinentijs)* as the things that are parts or portions of the ſame entyre thing paſſeth.

*Fitzh.*181. For if a man grant common of Eſtouers to be burnt in ſuch a Mannor, of the grantee by the grant of the Mannor this common paſſeth, without the words *cum pertinentijs*, for by the feofment made of the Mannor without deed, all appurtenances paſſe by *Finchdens* opinion, as *Fitzh.* abridgerh it, although it be not in the report at large, and for the argument of thoſe in the time of *Hen.* the 7. before remembred, wee ſay for that, that an *Advowſon* appendant paſſeth by the grant of the Mannor it is no good conſequence, for the reaſon aforeſaid.

44.*E*,3, *bre*,581,

5,*H*,7,37, *b*.

9,*H*,6,28, *b*;33,*H*.6. 39. The ſecond reaſon anſwereth the difference in *H.6.* where the *Advowſon* is granted before the *habendum* and where not, that it is not any proofe

proofe that the *Advowſon* appendant is parcell of the Mannor, for *Pryſot* ſaith, that things in groſſe or ſeuerall being named after the *habendum*, cannot paſſe with the firſt things ſpecified in the clauſe of the Graunt, but things appendant or appurtenant to the premiſſes of the Grant may very well paſſe; although the appurtenants be ſpecified after the *habendum*. 38. *H.* 6. 38. *a.*

As concerning the exception of an *Advowſon* appendant to be made in the Demaund of a Mannor, the ſame is not any proofe, that the *Advowſon* is part of the Mannor, for the opinion of *Stone* is, that by the Demeſnes of a Mannor, or by the Demeſnes of the moitie of a Mannor, (as the caſe is there) without the words *(cum pertinentijs)* the *Advowſon* appendant cannot be recouered. 3. *Reaſon Anſwered.* 19. *E.* 3. *Fitzh. br.* 884. *Regiſt.* 228. *br. incid.* 38.

G Lect.

Lect. 8.

If an Advowson appendant that consists of Demesnes and Seruices, shall bee appendant in respect of the Demesnes onely, or in respect of the Demesnes and Seruices.

AT this present it remaineth, to determine if an *Advowson* appendant to a Mannor is appendant, in respect that it consisteth of Demesnes and Seruices; or if it shal bee appendant to a Mannor, in respect of the Demesnes onely, in as much as the Demesnes are one corporall Inheritance, and such part of the Mannor, as onely lyeth in manuell occupation.

This question was of late time largely disputed, & at the last, vpon graund deliberation learnedly determined, in the *Common Pleas*, in a *Quare Impedit*, betweene *Gyles Long* Plaintiffe, and one *Hening* Patron, the Bishop of *Gloceſter* as Ordinarie, and *Hadler* as Clerke, and the same is there among the Rolles of *Pasche* 31. *El. Rot.* 2024. which I haue set heere necessarily in briefe, and being thus:

P. 39. 39. Eliz. Rot. 2024. Longs case, in Com. bank:

A Feofement in Fee was made of the Mannor of *Frembillet*, and the Advowson thereto belonging, and Liuery of Seisin was made in the

the Demesnes, in *anno*,7. *El.* and after in *anno* 17. of her Reigne the Advowson was granted to one *Ranger*, and after in the 25. *El.* one *Boyter* being tenant of the same Mannor attorned to the Feoffee, then the Church became voyd, and if the Feoffee or the Grantee should present was the question, for the better entendment whereof, wee will first see what can bee said vpon both parts.

That it is appendant onely in respect of the Demesnes, those or the like authorities or reasons may bee produced.

It is said, that an Advowson appendant to a Mannor, cannot be appendant to a Rent, or Service of the same Mannor, but onely to the Demesnes, whereof onely if a man hath a Mannor to which an Aduowson is appendant, and granteth the Demesnes *cum pertinentijs*, the Advowson passe appendant therevnto; so likewise, if he grant the Demesnes, excepting the Advowson, the Advowson is now becommed in grosse. 5.*E.*6. 70. *Pl.*41. *Dyer*

If a man should haue a Mannor, and blacke acre that was holden of the same Mannor Escheateth, so that the same Acre is become now parcell of the Demesnes, of the same Mannor, if hee that is so seised of the same Mannor, grant all the Demesnes, excepting blacke Acre, and the same Advowson, the Advowson is become in grosse, and yet it is a Mannor notwith-

ſtanding, for now blacke acre is onely the Demeſnes which together with the other ſeruices cauſe the Mannor to continue, neuertheleſſe the *Aduowſon* is become in groſſe, for that, that it was appendant onely to the Demeſnes of the Mannor, which were aliened, and cannot now be appendant to blacke Acre: becauſe it was neuer before appendant to the ſame, in as much as appendancie is onely granted vpon continuance and preſcription, and not vpon the ſame reaſon.

If hee that is ſeiſie of a Mannor, whereof blacke acre is holden, and the ſame Eſcheateth, and he granteth the ſame blacke acre, (*vna cum Aduocatione*) the *Aduowſon* paſſeth not appendant to the acre, but in groſſe, as aforeſaid; but if in the two aforeſaid caſes, a man were ſeiſie to a Mannor before the Statute of *Weſtminſter* the third, *De quia emptores terrarum*, with an *Aduowſon* thereto belonging, and giue certaine acres parcell of the Demeſnes of the ſame Mannor to diuers perſons, to bee holden of the ſame Mannor, if afterward ſuch acres Eſcheate, and the Lord granteth the reſidue of the Demeſnes excepting the acres ſo eſcheated, and the *Aduowſon*; the *Aduowſon* is ſtill appendant to the ſame Mannor: becauſe it was appendant to the ſame Acres, before they were giuen to bee holden of the Mannor.

If a man were ſeiſied of a Mannor to which

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an *Advowſon* is appendant, and before the Statute of *Weſtminſter* the third were likewiſe ſo ſeiſied of other acres of land in groſſe, and not parcell of the ſame Mannor, if he had giuen the ſame acres of Land to diuers perſons to bee holden of the ſame Mannor, (as he might then haue done) and after the ſame acres of Land eſcheated, now are they parcell of the Demeſnes of the ſame Mannor, although they neuer were ſo before, and after the Lord of the Mannor granted all the ancient and former Demeſnes of the ſame Mannor vnleſſe one acre, this acre and the other acres Eſcheated maketh now the Demeſnes of the ſame Mannor, and the *Advowſon* appendant, is ſtill appendant to the whole Mannor, but yet it was ſo appendant in reſpect of the one acre, that was parcell of the ancient Demeſnes of the ſame Mannor, and if the Lord intend at any time to ſeuer this, from the Mannor, and ſtill to keepe it appendant to no acre, but onely to that which was parcell of the Demeſnes of the Mannor, all which reaſons prooue that the *Advowſon* is appendant more in reſpect of the Demeſnes then otherwiſe.

Of the other part, thoſe caſes proue that an *Advowſon* appendant to a Mannor is not appendant to any part of the Mannor, but to the entyretie, for it is an intyre thing; and therefore if a man hath a Mannor to wch an *Advowſon* is appen-

dant, if he Enfeoffe *I. S.* of the ſame Mannor, and maketh Liuerie of the Demeſnes, and before the Attornement of the Tenants, the Church becomes voyd, the Feoffee ſhall not preſent; becauſe he hath not the Mannor to which the Advowſon was appendant: but if the tenants afterward attorne within ſixe moneths, after the auoydance he may very well preſent thereunto.

So likewiſe in the former caſe, if the Feoffor or the eſtranger preſent before the Attornment of the Tenants; yet if afterward attornment be had within the ſixe Moneths after the auoidance, the Feoffee may bring and maintaine his *Quare Impedit*, and ſo recouer his preſentation, which prooueth that the Advowſon is appendant to the whole Mannor, as it is entyre, and not by reaſon of the Demeſnes onely, for the determination of the Law in this; It is true that the Advowſon in ſuch caſe is appendant to the entyre Mannor, and not to any part thereof, during ſuch temps, as it remaines a Mannor without alteration, or diſ joyning the Advowſon from it; neuertheleſſe, if you will diſſolue the Mannor and ſeuer the Advowſon from it, and yet deſire to haue the ſame appendant, then it cannot be appendant to any part of the Mannor, but onely to ſuch Lands as were of the ancient Demeſnes of the ſame Mannor; where-

Iudgement. fore in the firſt caſe, Iudgement was giuen, that after the Attornment had, the Advowſon

paſſed

paſſed to the Feoffee of the Mannor, as appendant to the entyre Mannor, and that the Graunt made in the meane time betweene the liuerie of the Demeſnes, and the attornement of the Tenants, was voyd, and that the Advowſon paſſed not thereby to the ſame Grantee of the Advowſon, but is (by the Attornment, by which the ſeruices paſſed) made appendant to the entiretie in the hands of the Feoffee.

Lect. 9.

How an Advowſon may bee ſeuered from the principall, and by what meanes it may be reconnexed thereunto againe.

IN the two laſt former Lectures hath beene declared at large; Firſt, to what kind of Inheritance an *Advowſon* may bee properly appendant; and then in what manner, it may be appendant: Now remaineth the third thing then treated of, that is to ſay, how it may be ſundred from the principall; and againe, by what meanes it may be thereto annexed by Entrie or without entrie into its principall.

It may bee ſundred eyther rightfully or by a rightfull conueyance, of which wee ſhall ſpeake more at large when wee declare the nature of an *Advowſon* in groſſe, and of that which is partly in

in grosse partly appendant, whether it may bee sundred in a wrongfull manner, as by a *tortious act*, that is to say, by Disseisin of the Mannor, to which it is appendant, or by a wrongfull assurance as by discontinuance, or other wrongfull disposition thereof. As for vsurpation wee shall speake thereof in a place more conuenient afterward at large, if therefore a man be disseised of a Manner to which an *Advowson* is appendant, and the *Advowson* becomes voyde the Mannor still remaining in the hands of the Disseisor, this was ancient Law as *Bracton* saith, that he should not haue presented to the *Advowson* vntill he had recontinued or made his entrie into the Mannor, because saith he, *Quod sesinam habere non poterit quis de pertinentijs, antiquam acquiseret principale.* But at this day the Law is contrary, so that if a man be seisie of a Mannor, and the entrie of the Disseisee being lawfull the *Advowson* becommeth voyde, the Disseisee may present to the Church, before his entry into his Mannor, but if the Disseisor bee seisie of a Mannor by disseisin, to which an Advowson is appendant, and the Church becomes voyd, so that the disseisor presenteth, whereupon the Clarke is admitted Instituted and Inducted, it seemeth that the disseisee in this case shall not haue his *Quare Impedit*, to recouer his presentation, vnlesse he first enter into the Mannor to which the Advowson was appendant, and though hee en-

Bracton. lib. 2. fo. 55. C. 23.

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ter, yet he shall be driuen to his action.

Yet if a man be seisie of a Mannor, to which an *Advowson* is appendant and bee disseisied of the same Mannor and the Church becomes void, and the Disseisor presenteth one that is admitted, Instituted, and Inducted, and so continueth parson sometime after, if afterward the *Advowson* become voide, now is not the *Advowson* so gained by such vsurpation, but if that I that was deseisied enter into the Mannor I may againe present to the *Advowson*, becausse the former vsurpation was a meane betweene the disseisin and the reentrie, by which reentrie the Disseisors estate as well in the *Advowson* as in the Mannor, is clearely defeated. But it is otherwise of an *Advowson* in grosse, in which case the Patron shall be driuen to his Writ of right, so likewise if I be seisie of a Mannor, to which an *Advowson* is appendant, and afterward the Church becomes voyd, and I present and be disturbed, and after I be deseisied of the Mannor; here I shall bring my *Quare Impedit* and recover my presentation, before I enter into the same Mannor.

And so much is said, where the entrie of him that hath right is lawfull in the principall, but where the entrie is not lawfull there he shall not present to the *Advowson*, vnlesse recontinuing the principall; and therefore if a man bee seisied of a Mannor to which an *Advowson* is appen-

dant, and be diſſeiſied, if the Diſſeiſor dye ſeiſied, and the Church become voyd, the diſſeiſſee ſhall not preſent to the Church, vnleſſe hee firſt recover the Mannor.

If Tenant in tayle bee ſeiſied of a Mannor, to which an *Advowſon* is appendant and maketh diſcontinuance of the ſame Mannor, and after dyeth, if the Church become voyd the iſſue in taile ſhall not preſent therevnto, vntill hee hath recovered the Mannor by Formedon to which the *Advowſon* was appendant.

Likewiſe if a man bee ſeiſied of a Mannor in right of his wife, &c. and both diſcontinueth the Mannor with the *Advowſon*, and the Husband dyeth, if afterward the Church become voyde, the wife ſhall not preſent vntill ſhee hath recontinued the Mannor by *Cui in vita*, but foraſmuch as the Statute of the 30. *H.* 8. 28. giueth in ſuch caſe power to the wife, or her heires, to enter into the Land ſo aliened.

The Law at this preſent day, muſt of neceſſity bee taken, that the Wife or her heires in the former caſe may preſent, without recontinuance of the Mannor, for that, that the ſame Statute ordained then, that ſuch alienation &c. Feoffement act or acts, made or done by the Husband, ſhall not bee nor make in any manner any diſcontinuance thereof, or be preiudiciall to her or her heires.

The former rule hath an exception in this manner,

ner, yet notwithſtanding the entrie being not lawfull in the principall; yet if the *Advowſon* be ſevered, and in any manner cannot bee recovered, then may the party wronged notwithſtanding preſent without recontinuance of the principall; As if a man before the Statute of the 32. *H.* 8. 28. be ſeiſied of a Mannor in right of his Wife, to which an *Advowſon* is appendant, and giueth to an Eſtranger the ſame Mannor or parcell thereof with the *Advowſon* in fee, and dyeth afterward, the Church becommeth voyde, and the Eſtranger preſenteth and then Alieneth the Land to another in fee, ſauing the *Advowſon*, and now the Church becomes voyde, the wife in ſuch caſe may preſent to the Church without any recontinuance of the Land diſcontinued to which the Advowſon was appendant.

Quære therefore in the 5. *H.* 7. 37 where it is holden that if there be tenant in tayle of a Mannor to which there is an *Advowſon* appendant and he alieneth the Mannor, with the Advowſon in fee, and the Diſcontinuee granteth the Advowſon to another in Fee, ſevering it from the Mannor; the iſſue in tayle ſhall not preſent vntill ſuch time as hee hath recontinued the Mannor, neuertheleſſe if a remitter bee of the principall, hee that is ſo remitted may preſent to the Advowſon the next time that it becommeth voyd, notwithſtanding any vſurpation thereof before had: For if Tenant in tayle bee of a

Mannor to which an Advowson is appendant and discontinueth the same, and the Discontinuee granteth the Advowson to another in fee, and afterward reenfeoseth the tenant in tayle of the Mannor, who dyeth seysied of the Mannor, now his heyre shall present to the Advowson when it becommeth voyde; and if hee be disturbed hee shall haue a *Quare Impedit*, because hee is remitted to the Mannor, and hath not any remedie otherwise to come to the *Advowson*.

But vpon the other part if tenant in tayle bee seisie of a Mannor to which an *Advowson* is appendant and discontinueth the same, and afterward the Church becomes voyde, and the tenant in tayle presenteth to the Church by vsurpation, it seemeth by the better opinion, of the 5. *H.* 7. 36. 38. that hee is not remitted to the *Advowson*, for that, that his ancient right therevnto was as to an *Advowson* appendant, but now it is in grosse; But if the tenant in tayle had aliened the same to an Estranger in fee, and after dyeth; notwithstanding that, hee take the rents and services, that afterward discendeth to the Issue, yet is the issue therevnto remitted; because such rents and services are parcell of the Mannor and not appendant.

And so it was likewise before the said Statute of 32. *H.* 8. if a man bee seisie of a Mannor which is an *Advowson* appendant in right

right of his wife, and diſcontinueth the ſame Mannor, and after the Church becomes void, and he preſenteth to the Church by vſurpation, and dyeth; hauing iſſue by the wife, and the wife alſo dyeth, the iſſue in this caſe is not remitted to the Advowſon, for the reaſons before ſhewed; hereof it enſueth likewiſe, as before partly hath appeared, that in all caſes where there is a Mannor, to which an Advowſon is appendant, and the Mannor with the *Advowſon* is aliened with wrongfull conueyance, and the entrye of him that hath right is not taken away, there may hee preſent to the Church without recontinuance of the Mannor, to which the *Advowſon* is appendant; and therefore if a man make a leaſe for life of a Mannor to which an *Advowſon* is appendant, if the leſſee for life make a Feofment in fee, of the Mannor and *Advowſon*; and after the Church becommeth voyd, the leſſor may preſent to the Church, without any entrie made into the Mannor, becauſe his entrie was lawfull into the Mannor. But if it be a rightfull purchaſe, that requireth ſome other act to be done, for the execution and perfection of the ſame, then cannot the perfection thereof bee accompliſhed in the acceſſarie, that is to ſay, in the Advowſon before the ſame bee performed in the principall; wherefore it is holden by the better opinion in the 9. *E.* 3. 43. 839. that where a

certaine Chamber was exchanged for certaine Acres of land, with an Advowſon appendant to the ſame acres of Land: to perfect this exchange, hee that had the acres and Advowſon in exchange, could not preſent to the Advowſon vntill he had made his entrie into the acres. And thus much hath beene ſaid, how an Advowſon appendant may bee ſeuered from the principall, and againe recontinued with re-entrie, or without entrie into the ſame.

Lect. 10.

Of Advowſons in Groſſe.

AS concerning our firſt purpoſed Diuiſion, to be eyther appendant or in groſſe, or partly appendant, or partly in groſſe; I haue before proſecuted the firſt part, that is to ſay; The natures of *Advowſons* appendant, now therefore it reſteth to ſpeake ſomewhat of *Advowſons* in Groſſe.

The originalsof *Advowſons* in groſſe, ſeemeth to be grounded vpon two occaſions; The firſt is, that *Advowſons* in groſſe at the beginning begun originally by one of the before-ſpecified three manner of wayes; which is, *Ratione fundationis*, for when they were agreed, that hee that founded the Church, and was at the coſt of the

the building thereof, ſhould be Patron thereof; hee cannot be Patron of this by reaſon of any Land or Dotation, by which his patronage might be appendant, but onely by reaſon of the building, which being a Patronage without Land, muſt of neceſſitie bee the originall cauſe of Advowſons in groſſe.

The ſecond occaſion of *Advowſons* in groſſe, was the ſundering and ſeuerance of them from the principall to which they were firſt appendant, and ſo by Graunt or other Conueyance they became in groſſe, which before were appendant; wherefore how they may be ſundred by Graunt, now let vs conſider, and ſee what queſtions in our Bookes haue been moued herevpon. In the 33. *H.* 8. 44. 48. 112. *Pyer* of the Opinion that *Shelly* is, That if a man be ſeiſied of a Mannor, to which an *Advowſon* is appendant and alien one Acre parcell of the Mannor, and by the ſame Deed, after graunteth the *Advowſon*, that the *Advowſon* ſhall paſſe in groſſe; otherwiſe, hee thought the Law to bee as if the Feofment were made of the entyre Mannor; yet this Difference agreeth not with the opinion of *Hill*, who thinketh that in both caſes, the Advowſon paſſeth appendant.

Yet I thinke, If a man be ſeiſied of a Mannor to which an *Advowſon* is appendant, and after granteth by his Deed one Acre parcell of the Mannor, and by another Deed the *Advowſon*, and

and deliuereth both thoſe Deeds at one time to the Grantee, although in conſtruction of Law, both thoſe Deeds are but one Deed; yet the Advowſon paſſeth in groſſe clearely, and not appendant to the Acre.

If a man be ſeiſied of a Mannor with an Advowſon thereto appendant, and graunteth the Mannor to *I.* and *S.* excepting one acre, the Advowſon not being ſpecially ſpoken of, in the Grant, it ſtill remaineth to this Acre excepted; For ſaith *Bracton*, *Si partem fundi dederit quis quamvis cum omnibus pertinentijs ſuis, & partem retinuerit, non propter hoc tranſſertur advocatio ſed cum donatore, remanebit licet minimam partem fundi retinuerit non enim tranſſertur cum aliqua parte fundi niſi ſpecialitur tranſſertur.*

If hee which hath a Mannor to which an Advowſon is appendant giueth one part of the Mannor, with one part of the Advowſon to *A.* and the ſecond part of the Mannor with the ſecond part of the Advowſon to *B.* and the third part of the Mannor with the third part of the Advowſon to *C.* in fee, yet notwithſtanding this Diuiſion, the Advowſon remaineth in common, appendant.

If a Mannor to which an Advowſon appendant is belonging, diſcend to an heire, and if hee grant the moitie or third part of the Mannor *cum pertinentijs*, no part of the Advowſon paſſeth; but if he aſſigne Dower to his Mother,

of

of the third part of the Mannor, *cum pertinentijs*, ſhe is hereby endowed of the third part of the *Advowſon* and may haue the third preſentment.

If a man bee ſeiſied of a Mannor or one acre of Land to which an *Advowſon* is appendant, and maketh a leaſe of the Mannor or acre, for tearme of life, excepting the *Advowſon*, the *Advowſon* is in groſſe and cannot bee appendant to the reuerſion of the Mannor or acre.

But if I leaſe the Advowſon for tearme of life, reſeruing the Mannor in my hands, yet the reuerſion of the Advowſon remaineth alwayes appendant to the Mannor, or to the acre of Land.

For if a grant be made by me of a Mannor or acre, with the appurtenances, the reuerſion of the Advowſon paſſeth, for the reuerſion of an Advowſon may bee appendant to a Mannor or acre in poſſeſſion, but the Advowſon in poſſeſſion cannot be appendant to the reuerſion of an acre or of a Mannor.

Alſo, if a man hath a Mannor to which an Advowſon is appendant and alieneth the ſame Mannor, and excepteth the Advowſon, the Advowſon is become in groſſe, and although hee purchaſe the Mannor, yet is the Advowſon ſtill in groſſe; and cannot bee appendant.

But in all theſe caſes ſome are of opinion that

although the *Advowſon* bee excepted out of the grant of the Mannor, yet neuertheleſſe, it is requiſite to haue a Deed of ſuch grant containing ſuch exception, otherwiſe the *Advowſon* will paſſe with the Mannor.

LECT. II.

Of Advowſons partly appendant, partly in Groſſe.

HAuing formerly ſpoken of *Advowſons* appendant and in groſſe, now remaineth the laſt member of the former diuiſion to be mentioned, which is Advowſons partly appendant, partly in groſſe.

Such Advowſons as are partly appendant and partly in groſſe, are ſo deemed either in reſpect of the time or in reſpect of the perſons.

In reſpect of the time in this manner, ſome Advowſons there are, that are at one time appendant and at another time in groſſe, and ſo againe may be appendant as occaſion ſerueth. As if a man bee ſeiſed of a Mannor or of an acre of land, to which an *Advowſon* is appendant, and leaſeth the ſame Mannor or acre, excepting the *Advowſon*, the *Advowſon* is now become in groſſe, and yet after the leaſe is ended, ſhall bee

bee againe appendant as before.

In reſpect of the parſon it may ſo happen, that an *Aduowſon* may bee appendant in regard of a proprietor thereof, and that in many caſes. One caſe to begin with, is this, that if a man be ſeiſied of a Mannor to which an *Aduowſon* is appendant, and an Eſtranger leaueth a fine of the ſame *Aduowſon* to him that is now ſeiſied of the Mannor and *Aduowſon*, vpon which fine the ſaid counſee (being ſtill owner of the Mannor and *Aduowſon*) granteth to the Counſor that hee ſhall preſent to the *Aduowſon* euery ſecond auoydance, by this fine the *Aduowſon* remaineth in reſpect of him that hath the Mannor, ſtill appendant to the Mannor as before, but in reſpect of the Counſor that neuer had intereſt before, at euery ſecond auoydance it is become in groſſe, and he ſhall preſent thereunto as to his *Aduowſon* in groſſe.

But if (as he in the former caſe) hee that was ſeiſied of the Mannor had leauyed the fine, (and the Eſtranger ſo being counſee) and made ſuch grant to the counſee to preſent at euery ſecond turne, the *Aduowſon* had beene totally in groſſe; for by the counſance it had beene wholly in groſſe, and ſeuered from the Mannor.

If three bee ſeiſied of a Mannor that hath an *Aduowſon* appendant thereto belonging, and two of them releaſeth all their right of the *Ad-*

vowſon to the third, the third is ſeiſied of two parts of the Advowſon as in groſſe, and of the third part as appendant, for that, that the third part, was neuer ſeuered from the Mannor; but if the third dye, all the entyre Advowſon deſcends in groſſe to his Heyre, for nothing was in Ioynture but the Mannor that ſuruiued to the other two, that releaſed, their right in the Advowſon, and no part of the Advowſon can come to them; for that, the ſame was not in Ioynture, at the time of the death of the third Ioyntenant, and alſo becauſe they releaſed their right before.

If two Ioyntenants bee ſeiſied of a Mannor to which an Advowſon is appendant, and the one granteth all his right of the Advowſon vnto another in Fee, this Advowſon is both in groſſe and appendant, and if hee that hath the Mannor, and ought to preſent euery ſecond turne; bring his *Quare Impedit*, he ſhall not ſay that he is ſeiſied of the Mannor with the Advowſon appendant at euery ſecond turne (namely, when there is partition betweene them) to preſent by turne, but ſhall ſay that he was ſeiſied of the Mannor with the moytie of the *Advowſon* appendant.

If a Mannor with an *Advowſon* appendant thereunto, deſcend to two coperceners, and they make ſuch partition of the Mannor, and compoſition to preſent, although the compoſition

position be otherwise then of right is due, yet is the first presentation to belong to the eldest, and the second to the second copercener, &c. and the *Advowson* remaineth still appendant notwithstanding such composition, to present by turne.

But if three Mannors discend to three Coperceners, and an *Advowson* is appendant to one of them, and they make such partition, that euery Copartner hath a Mannor allotted to him, and composition to present by turne to the Advowson, now is the Advowson in such case severed and in grosse, in respect of the Coperceners.

If a man bee seised of foure Mannors, and to one of them an Advowson is appendant and dyeth, hauing foure Daughters, who maketh partition of the Mannors, so that everie of them hath a Mannor, out of which partition the *Advowson* is excepted, this *Advowson* is in grosse by reason of the exception; yet it seemeth if all the other Sisters should dye, except shee to whom the Mannor was allotted to which the *Advowson* was apdendant, that the *Advowson* should bee againe appendant to the Mannor.

If two Churches bee, and the *Advowson* of the one is appendant to a Mannor, and the other is in grosse, and the two Churches hap to bee vnited, and vpon the vnion it is ordained,

that the Patrons ſhall preſent by turne, now in reſpect of him that hath the Mannor, the Advowſon ſhall be appendant, and hee ſhall preſent thereunto as to an *Advowſon* appendant, but as to the other, hee ſhall preſent as to *Advowſon* in groſſe.

Lect 12.

What Preſentation is, and what is the effect and fruit thereof, and in what manner Preſentation and Nomination differ.

IN the aforeſaid Lecture or reading hath beene declared ſuch matters as was requiſite for the explanation of the word *Right*, ſet forth in the Diſcription of an *Advowſon*, which word being there put in ſteed of that which the Logicians call *Genus*, the reſt of the words ſubſequent there likewiſe expreſſed, are the Proprieties, effects, and qualities incident to an *Advowſon*, thereby to diſtinguiſh this Right from other rights: ſo that by ſuch Diſcription, the nature of an *Advowſon* may be fully Deciphered.

An *Advowſon* as is ſaid, is *Ius preſentandi*, and the power to preſent is the very fruit, effect, and entire profit of an *Advowſon*, which is by the meanes of preſentation to preferre and advance our Friend, and Preſentation is thus deſcribed.

A

A Presentation is the Nomination of a Clarke to the Ordinarie to bee admitted, and Instituted by him to the Benefice voyd, and the same being in writing, is nothing but a Letter missiue to the Bishop or Ordinarie, to exhibite to him a Clarke to haue the Benefice voided, the formall force hereof resteth in these words chiefly, *Presento vobis Clericum meum*, 13. *H.* 8. 14. *b.* Therefore in our Bookes of Law, an *Advowson* is called nothing but a *Nomination* or *Presentation*, a power to prefeire and inable another to haue the Benefice, which notwithstanding the Patron cannot inioy.

Wherefore if the Nomination of an *Advowson* be granted *habendum* the *Advowson*, the *habendum* is sufficiently pursuant; for although it varie in name, yet it is all one in nature, so that the Graunt of the nomination of an *Advowson*, is in substance the Graunt of the *Advowson*. For the profit and commoditie of an *Advowson* resteth in the Nomination or Disposition of the same: hereof it ensueth, that if a man grant to me an *Advowson* excepting the Presentation during his life, such exception is voyd and repugnant to the Graunt. So that the opinion of *Thompton* in the second Commentarie of *Plowden* in the Arguments of *Smith* and *Stapletons* case, cannot bee Law; who thinketh that if Tenant in tayle bee of an Advowson, and hee granteth to one by Fine the nomination of the

38. *H.* 6. 38. *b.* 38. *a.*

Clarke

Clarke to the same Advowson when it becommeth voyd, that this Fine shall not bind the Issues, by the Statute of the 32.H.8.36. Because such Fine is levyed of a thing intayled, as hee thought; whereby aboue it hath appeared, that the Presentation and the Nomination is one thing, and the fruit and full profit of the Patronage; and therefore such fine is of full effect and force to binde the issue in tayle, for the Advowsons, and yet if the case aforesaid bee so vnderstood, that tenant in tayle of an Advowson granted by fine the Nomination of the Clarke to one, and his Heyres, so that when the Church became voyd, the grantee and his Heyres should nominate a Clarke to the tenant in tayle and his Heyres, and that hee or they should present the Clarke (so nominated) to the Ordinarie; and the tenant in tayle dyeth, such fine shall not bind the issues in tayle; therefore the fine is not of things intailed, for there is the nomination and presentation distinguished.

The presentation may bee distinguished from the nomination, so, that one may haue the Presentation, and another the Nomination, and so they may bee diuers distinct inheritances. As if I bring seised of an Advowson in fee, granteth to I.S. and his heyres, that he and his heyres euery time the Church becommeth voyde, shall nominate to mee a person to bee presented to the same Church, which person so nominated, I or my Heyres

heyres shall present to the Ordinary of the place to be admitted accordingly, into the Church. And a question hath beene moued hereupon who shall be said Patron of the same Church, some thinke that hee that hath the nomination shall be Patron onely, and that he that ought to present, shalbe as seruant to him that hath the nominatiõ.

24.E.3.69 a.b, 14.H.4 11.a.1.H.5 16.5.E.4. 123.a.21. H.6.17.

Therefore in the 14.E.4. 26. the Iustices distinguished, that if one bee seised of an *Advowson* and granteth to *I.S.* and his heyres to nominate at euery auoydance to him and his heyres a Parson to be presented to the same Church, which Parson so nominated, shall be by him or his heires presented to the Ordinary, that he to whom the nomination is so granted shall be Patron.

But if I grant to *I.S.* that at euery auoydance hee shall nominate to me two Clarkes, of which I shall present one to the Byshop, now I remaine Patron, notwithstanding this, because the Election is in me which of the parties named shall bee presented and haue the benefice.

If a man haue the Nomination to a Benefice, and an other the Presentation, and he that hath the Presentation granteth an Anuitie to a Clarke vntill he be advanced to a Benefice by the Grantor, if afterward the Church become voyd, and the Grantee bee Nominated, to the Grantor to be presented ouer, who doth so accordingly, and vpon this bee admitted, Instituted and Inducted, yet the Anuitie shall not cease, for that,

that the Grantee was not thereunto preferred by the Grantor, although he preſented him. Of the other part there is an authority, that if a Spirituall man haue the Preſentation, and a Lay-man the Nomination, if the Lay man nominate to the Eſpirituall man a Clarke to bee preſented over, who doth ſo accordingly, if before his admiſſion the Lay man nominate another to bee likewiſe preſented, which the Spirituall man refuſeth to doe; for that, that hee hath preſented one already by his nomination, the Lay man ſhall not maintaine any *Quare Impedit* againſt the Preſentor for ſuch refuſall; becauſe, the Spirituall man is Patron, and beeing a Spirituall man, hee cannot change his preſentation alreadie made; Alſo it ſhould ſeeme in ſuch caſe, that the preſentation ſhould bee made onely in his Name, that hath the Preſentation, and not in his name that hath the Nomination; therefore, if the Ordinary ſhould refuſe the Clarke for diſabilitie, notice ſhall be giuen only by him, to him that hath the Preſentation, & not to him that hath the nomination; for the better reconciliation of of thoſe and the like authorities, *diſtinguendum eſt ſic*, that in reſpect it muſt bee had of ſuch an Eſtranger, as ſhall vſurpe vpon the Byſhop or vpon the Patron in regard of each other, and in reſpect of all ſtrangers that vſurpe; Hee that hath the nomination is onely Patron, and ſhall haue a *Quare Impedit* or a writ of Right, as h e caſe

caſe requireth: In which his writ of *Quare Impedit*, ſhall be this; *Quam permittit ipſum preſentare*: but his declaration ſhall bee eſpeciall, that the Plaintiffe ought to nominate one, & that he ought to preſent him ouer to the Byſhop, and that *B.* hath diuſtbed him of his nomination, and the writ to the Byſhop ſhall bee a recoverie to the Plaintiffe, *Quod Epiſcopus admittat Clericum ad denominationem*, &c. in reſpect of the Byſhop that hath the preſentation, he ſhall be ſaid Patron; for if hee that hath the Preſentation cannot varie from his preſentation, the other ſhall not; yet if hee that hath the preſentation, and he that hath the nomination bee both Laymen, then he that hath the nomination may varie in his preſentation, and change the ſame as often as he will, vntill Inſtitution be had: wherefore in the former caſe it enſueth, that if hee that hath the preſentation bee a Spirituall man, and preſent him that is nominated to him, beeing not fit, hee ought not to haue notice giuen him of the refuſall of the Ordinarie, for this cauſe, he that hath the nomination ſhall not haue any notice likewiſe.

For I thinke the Law to bee thus; If one hath the nomination and another the preſentation, and the Church becomes voyde, if the Laps incurre, and hee that hath the Preſentation onely preſenteth to the Byſhop, before the Byſhop take benefit of the Laps, without any nomination of

the other, the Byſhop in this caſe ought and is bound to admit his Clarke that hee ſo preſenteth, as the Clarke of the Patron himſelfe. If reſpect be had each of other, then are they both Patrons after a manner, and by iniurie offered by every of them to the other, one of them may puniſh the other. As if he that hath the nomination will preſent immediately to the Ordinarie, he that hath the preſentation may bring a *Quare Impedit* or a writ of right of *Advowſon*, againſt him as his caſe requireth, ſo if hee that hath the preſentation refuſe to preſent the Clarke nominated to him, or preſent one himſelfe without nomination, the other ſhall bring a *Quare Impedit* or a writ of right againſt him, and his writ ſhall bee *Quod permat. ipſum preſentare, &c.* But in his declaration hee ſhall declare the ſpeciall matter.

Fitzh 33 b 14. H. 4 11. a. 21. H 6. 17. a.

In every of which ſuites and recoveries, and in the writ to the Byſhop ſhall be ſo, if hee that hath the nomination preſent to him that hath the preſentation, he that hath the preſentation may diſturbe him in two manners; eyther by refuſing the parſon nominated, or by preſenting ſome other himſelfe that is not nominated. If hee refuſe to preſent him that is nominated to him, and ſuite bee commenced without any actuall preſentation made by himſelfe, then the writ to the Byſhop of him that hath the nomination ſhall bee, that hee ſhall recouer his nomination,

24. E. 3. 60 b.

and

and that the Bysshop shall admit such as the other hath nominated to the presentor, according to his grant of nomination: But if the disturbance vpon which the suite is granted bee because the presentor that should present the parson nominated, hath presented some other himselfe, without nomination, then the nominator shall haue his writ to the Bysshop to present his Clarke immediately without any nomination at all, to be made to the other, that hath the presentation and to remoue the other Incumbent.

Finalliy, if one hath the nomination, and another the presentation, if such right of presentation accrew to the King, this shall preiudice, the inheritance of him that hath the nomination but he shall nominate to the Chancellor still, who in the name of the King shall present to the Ordinarie. And if the King present without any such nomination, the nominator shall bring his *Quare Impedit*, against the Incumbent onely, because the King cannot be tearmed as a Vsurper.

Lect. 13.

The things incident to Preſentation proſecuted, who may preſent, what Parſons may bee preſented, to whom the Preſentation muſt be made, and the manner thereof.

Before hath beene ſhewed what a Preſentation is, and what is the effect and fruit of the Patronage; and finally, in what caſe the Preſentation and Nomination differeth.

At this time it reſteth, how to proſecute the things incident to Preſentation, and to make ſhow who may preſent, what parſons may bee preſented, to whom the Preſentation muſt bee made, and in what manner; But becauſe no preſentation can bee made vnleſſe to a Church or Dignity, ſomething ſhall bee ſhowed, when they ſhall bee voyde, and vpon what occaſion.

An avoydance is in two ſorts, actuall in Deed, deſtitute in Law, which is an avoydance *de Facto*, and auoydance *de Iure*.

Actuall, is when the Church is actuall in deed deſtitute of his Incumbent in Law, when the Church being full of an Incumbent, is notwithſtanding

standing frustrate of his right and lawfull Incumbent by reason of incapacitie or crime in the parson of him that occupieth in steed of the rightfull and lawfull Incumbent, and therefore amongst the Canonists, *Ecclesia Dr. viduam suam sponsumque habet inutilem*, there is therefore a great difference betweene voydance in Law, and voydance in deed; the first of which two, the Espirituall Court hath to determine, and therefore the supreame head may so dispense there, that such auoydance in Law shall neuer come to be auoydance in deed, and of auoydance in Law no title accreweth to the Patron, vnlesse something bee thereupon accomplished, by the Espirituall Court, as a declaratorie sentence or such like; but vpon avoydance in deed, presentment accreweth to the Patron, yet in such and the like cases, *Distinguendum est*, for if the dignitie bee temporall, as a Master of an Hospitall or such like, and that there be found defect in him by visitors, it is an actuall avoydance, and the Patron may vpon this make a new collation, without solemne sentence of depriuation; but if the dignity bee Espirituall, it is requisite vpon such defect that sentence of Depriuation bee giuen, before auoydance can bee, and that such sentence be notified to the Patron, otherwise Laps shall not incurre against him,

Avoy-

Avoidance and Plenartie, are *primatiua contraria*, which if they come to bee tryable by issue betweene the parties, they are tryed by two distinct Lawes. Plenartie, which is, if the Church be full of an Incumbent or not, shall bee tryed by the Common Law, which is by the certificate of the Ordinarie; but Avoydance, which is, if the Church bee voyde or not, shall bee tryed by the Country impannelled in a Iury, notwithstanding if the issue bee vpon any speciall sort, or manner of avoydance, the same shall be taxed by the certificate of the Bishop, so that such speciall cause shall be Spirituall.

The efficient causes of avoydance, are eyther temporall as Death, or spirituall as Deprivation, resignation, creation session, and entrie into Religion, whereof more shall bee said afterward.

Lect. 14.

The two first particuler causes of Avoydance of Churches, viz. Is eyther Temporall, as Death; or Spirituall, as Depriuation; the one of it selfe being manifest, and the other a discharge of the Dignitie or Ministerie.

IN the last Lecture or reading before, was shewed something of auoydances of Churches in generall, now it remaines to pursue the perticular meanes; that is to say, Death, Depriuation, Resignation, Creation, or Cession, and entrie into Religion, of euery of which, we will speake something, as the cause requireth.

1 And first of all, concerning Death, *Quæ omnia soluit*, the matter of it selfe is manifest, and needeth no further declaration.

2 As concerning Depriuation, it is a discharge of the Incumbent of his Dignitie or Ministerie, vpon sufficient cause against him conceiued and prooved; for by this, hee looseth the name of his first dignitie, and herein two manner of wayes; eyther by a particuler sentence in the Spirituall Court, or by a generall sentence by some positiue or Statute Law, of this Realme.

1 Deprivation, is in the Spirituall Court for that, that it is grounded vpon some defect in

the partie deprived, although it bee by act of Law, yet it is deemed as the act of the partie himselfe. The causes of Depriuation, by Censure in the Spirituall Court are to be referred to the Common Law, therefore let vs remember such of them, vpon which questions haue beene mooved in the Bookes of our Law, all which causes mentioned seuerally, may bee reduced to three principle points; first, want of Capacity; secondly, Contempt; thirdly, Crime. As concerning the first, although by the Common Law, a Lay person bee presented, and Instituted, and Inducted, to an especiall Benefice, which Curate is altogether vncapable of the same, yet the Church is not therefore to bee said voyde, as if no presentation had beene, but it is still full of an Incumbent, *de Facto licet non de Iure*, vntill by sentence Declaratorie for his want of Capacity, the Church be adiudged voyde, and vpon this no Laps shall incurre against the Lay Patron, without notice (of such incapacity, & sentence of deprivation thereupon) to him giuen, King *H.* 4. presented one that was incapable of his presentation, and the Presentee was thereby admitted, instituted & inducted, and afterward the Pope enabled the presentee by his Bill, yet the King had a *scire fac.* and thereby recovered his presentation againe, because the Incumbent was not capable whē he was presented. If the Patron present one that is meerely a Lay

man

man within the age of 25. & he vpon this be Admitted, Inſtituted, and Inducted, and afterward a *Qua. Imp.* be brought againſt the Patron and the ſame Incumbent, whereof Iudgment is given by the default of the Incumbent, where indeed the Incumbent was neuer at any time duely ſommoned according to the Law, by reaſon of which Iudgment, the ſame Incumbent is removed, if vpon this afterward, the ſaid Incumbent by ſentence declaratory be deprived in the Spirituall Court, for want of Capacity in ſuite there, for the cauſe of his incapacity exhibited againſt him, ſuch ſentence is good, & availeable in the Common Law, although the ſaid Incumbent were before removed from his Benefice by the Iudgement giuen againſt him in the *Qu. Imp.* for though ſuch declaratory ſentence giuen againſt him by the Spirituall Law, cannot remoue him that is removed already, yet it ſhall make this Incumbent anſwerable to the next Incumbent, for all the meane profits received by him, that was the firſt Incumbent, from the time of his Induction. Yet if the firſt Incumbent ſo deprined, will afterward bring a writ of deceipt vpon the Iudgement given againſt him in the *Quare Impedit* by default; for that, that he was not ſommoned as aforeſaid, hee ſhall haue Iudgement herein, and the ſame Deprivation had in the meane ſeaſon in the Spirituall Court, no Impediment thereunto; for that, that in the ſaid ſuite of Deceipt

the Incumbancie ſhall not be in queſtion, but onely the diſturbance of the Plaintiffe, in the *Quare Impedit*, and ſo for Incapacitie.

Contempt, may likewiſe be a cauſe of Deprination, as if the parſon or other Incumbent bee Excommunicate, and he ſo remaineth in his obſtinacie for the ſpace of fortie dayes, hee is for this deprivable of his Benefice, and yet the Church is not voyd in Deed, without ſentence in Deprivation giuen againſt him, and if before ſuch Deprivation, the King as ſupreame Ordinarie and the head of the Church would haue a Diſpenſation to the Incumbent, who for all the ſentence of Deprivation for his contempt had, hee ſhall hold his Benefice; ſuch Diſpenſation were voyde, and ſhould reſtraine the Patron from his preſentation acrewed to him, by meanes of ſuch Deprivation after enſuing.

The third cauſe, is Crime, within which may be comprehended Delappidation, or ſpoyle of the Church Benefice, once, in our Bookes, worthy of Deprivation, likewiſe Schiſme or Hereſie; for the which, or if for ſome other cauſes the Incumbent were deprived in ancient time in the Court of *Rome*, vpon ſuch Deprivation comming in queſtion in our Law, the iſſue ſhould be vpon the avoydance, and it ſhould be tryed where the Church or dignitie is; but becauſe, Crime is *Hidra*, with many heads, and an evill Tree, whereof is bred *Ingens proventus* much fruit

fruit, for all fruit of offences which may be comprehended vnder this name; therefore let vs surceasse further to deale with it, onely in generall, noting those three things as the incidents, and consequents of Depriuations.

First, that our Law adiudgeth not the Church actually voyde, without a sentence of Depriuation, as hath beene before prooued.

Secondly, that though such sentence of Deprivation be meerely wrongfull; yet the Dignitie is voyd, and the sentence remaineth in his force, vntill it bee released.

Thirdly and lastly, if the party depriued within time require by this Law an appeale (vpon such sentence of Depriuation giuen against him at the Court of the high Iurisdiction) such is the nature of an Appeale, that it holdeth (the sentence vpon which it was first brought) in suspence; because, in the Common Law it is said, to haue *effectum suspensum prioris pronuntiati*; and therefore, if it bee brought vpon Depriuation, it voydeth the vigour thereof, and reuiueth the former dignity, for such Church shall not be voyde, vntill the first sentence of depriuation chance to be affirmed in the appeale, and thus much of Depriuations in the Spirituall Court, shall suffice at this time.

Concerning Depriuation by Censure of Statutes and Positiue Lawes, see these Bookes, that is to say, 13. *El. Cap.* 12. 26. *H.* 8. *Cap.* 3. reuiued by the 1. *El. Cap.* 31. or 3.

Lect. 15.

The third particular cause of Avoydance, being Spirituall, is Resignation.

THe precedent Lecture before going, hath shewed the particuler causes of Auoydance of Churches, whereof the two first, Death and Depriuation, hath beene at large disciphered; the next is Resignation, of which I will also at this time something speake.

Resignation, or as the Canonists tearmes it *Remytation, Est Iuris proprij Spontanea refutatio*, or whereas Resignation is the voluntarie yeelding vp of the Incumbent (into the hands of the Ordinarie) his interest and right which he hath in the Spirituall Benefice, to which he was promoted. Of which the matter or subiect is the Spirituall benefice, as promotion Ecclesiasticall.

The forme is the manner how, and with what words and due Circumstances it is or should be accomplished.

The finall Causes or effects hereof, is eyther thereby to make the Spirituall Benefice void and destitute of its Incumbent, or vtterly to anient and totally to extinguish such Spirituall promotion.

The efficient Causes are the persons that resigne,

signe, and the persons to whom it is or ought to be resigned.

As concerning the matter; this onely may suffice to be obserued, that all Spirituall Dignities presentatiue may properly be resigned, although they be Abbies, Priories, Prebends, Parsonages, or Vicaridges, yet such Dignities as are certaine may also be resigned, or to speake more properly relinquished, as were some of the Abbies in the time of King *Hen.* the 8. and so may Bishoppricks at this day be resigned, &c. into the hands of the King as supreme Ordinarie of the Church and rightfull Patron of the same Bishoprickes.

As concerning the forme of Resignation, and protestation which must be when the partie will resigne, they are set out in the Register, *fol.* 302. in the folioes of the Booke following, as *Fitzh.* noteth in his *Nat. Br. fol.* 273. *F.* or *S.* The words of chiefe effect in such instrument of Resignatino, are *Remanti are, Edere, & Dimittere*, for Resignation is not any proper tearme of the Common Law.

Yet the Law of this Realme, more respecting matter then formalitie of words, hath adjudged a Graunt made by a Prebendarie to the King, to be an effectuall Resignation in the forme of these words following, that is to say:

Noverint me A. &c. ex animo Deliberatiuo, certa scientia & mero motu, & ex quibusdam causis iustis & rationalibus me specialiter mouent.

uent. vltrò & ſponte dediſſe ſereniſſimo Domino noſtro Ed.6. Angliæ,&c. ſupremo Capiti totorum Prebendarum ſuorum ac omnia maneria terras, tenementa poſſeſſiones & hereditamenta quecunque, tam ſpiritualia quam temporalia, ac omnem plenam & liberam facultat. diſpoſitionem authoritat. & poteſtat. dictæ prebendæ pertinen. ſpectan. appenden. &c. habendum & tenendum eidem Rege Hereditor. & Succeſſoribus ſuis, ad eius vel eorum proprium vſum,&c.

As touching the efficient cauſes of Reſignation; as firſt, the perſon that reſigne, if hee be not but onely Admitted and Inſtituted, although as concerning the Spirituall Function
Com. 526. he be a Parſon before Induction, yet becauſe no part of the Free-hold of the Spirituall Benefice is transferred to him, but by the Induction, hee cannot vntill after the Induction, if the King be
21.*E.*3.5.*a* Patron, make any good and effectuall reſignation; as therefore, *Renuntiatio reſpiſit plerumque ius queſitum, ac repudiamco pertinet ad ius nondum acquiſitum.* As alſo for that, that by this ſubmiſſion and Inſtitution, the Church is not full in reſpect that the King being patron, ſuch Incumbent before Induction is full ſubiect to haue his Preſentation and Inſtitution revoked.

But if a Subiect bee Patron, and his preſentee be admitted, ſuch preſentee (if hee be willing to kaue his Charge) may before Induction reſigne the

the Church, for the eſpirituall Dignitie was full of an Incumbent in reſpect of his Patron, and becauſe alſo there is no other meanes to cleare the Church of him but by ſuch renunciation.

As concerning the perſon to whom Reſignation muſt be made, *Diſtinguendum eſt*; for if he be onely purpoſed to auoyd the Church, and to cauſe the Patron to preſent againe, then it ought to bee done to the Ordinarie to whom of right the Admiſſion and Inſtitution belongeth, and to whom the Patron is bound to preſent; for it is a Rule amongſt the Canoniſts, *Apud enim debet fieri renuntiatio apud quem pertinere, dignoſcitur confirmatio*, and Reaſon will, it ſhall be ſo; becauſe the King as ſupreame Ordinarie, if ſuch Reſignation ſhould be made to him, hee is not compelable to giue notice to the Patron of ſuch Reſignation, nor can hee or any other Ordinarie collate vpon the patron ſuch notice.

Notwithſtanding, if the purpoſe be vtterly to extinguiſh ſuch Dignitie ſpirituall, the ſame Reſignation may be made to the King, as to the ſupreame head of the Church, as in ancient time it might haue beene made to the Pope.

For ſuch Authoritie and Iuriſdiction as the Pope vſed in this Realme, was contradicted by an Act of Parliament made in the 25 *H.* 8. and other Statutes to be in *H.* 8. and his Succeſſors; which Iudgement and opinion I hold to bee firme Law, eſpecially where the King himſelfe

is Patron, or where the Patronage is to some Spirituall man for euer, vpon Spirituall parsons the Pope (before the Statute of the 25 *E.*3.) by his prouisions and other meanes vsed more Iurisdictions then at any time Lay persons could be permitted to doe. The finall effect which consisteth in the end, wherefore Resignation was ordained, wee haue heard to be two-fold, the
1. one to adnihilate the Spirituall promotion,
2. the other to make it voyde and fit for no Incumbent; of the first, we haue sufficiently spoken before, and the vse of the other is manifest by those authorities subsequent.

A Prebend maketh a Lease for yeares rendering rent, and after resigneth it, it is holden cleerely, that by this his Resignation, this Prebend is discharged of the rent, and therefore such charge shall not be any burthen to his successour; likewise if a parson resigne after hee hath made a Lease for yeares, the Lease is avoyded.

Likewise, if a Parson permute or Change his Benefice, which indeed cannot bee accomplished without Resignation, the Charge or Graunt made by such Incumbent for yeares, is vtterly voyde.

If a Parson grant an Anuitie out of the parsonage, and after resigne, if after all this the Patron and Ordinarie will confirme such Graunt, the Confirmation, and the Graunt which was

voyd

voyd before Confirmation cannot be availeable.

With which agreeth *Pollyard*, who saith; 14.H.8.8.a
that if a parson charge a Gleebe, and after resigneth or dyeth, the charge is avoyded.

A Recoverie was had against a Parson in an action of Debt, and in a *fieri fac.* therevpon the Sheriffe returned, that the defendant was *Clericus Beneficiatus & non, &c.* in this case, if the Defendant resigne, the plaintiffe is destitute of his recovery, for by such Resignation the Church is discharged; because, the Ordinary cannot sequester the Spirituall Benefice vpon any processe awarded to him.

But if the Incumbent that so chargeth, bee such as hath by the law absolute power to deale with the lands of his Spirituall Dignitie, without the Confirmation of any other, and may by the Law discontinue as Abbot or pryor or such like, then such charge by him shall not be voyd, by such Resignation, but shall continue against his successors vntill it bee avoyded by some other meanes.

Thus much concerning the finall cause of Resignation, to which suffer vs to annexe the causes allowed by the Common Law, to mooue a Bysliop or any other beneficed parson to relinquish and surrender their function, *Conscientia criminis, debilitas corporis, defectus scientiæ, malitiæ plebis, graue scandolum, & irregularitas personæ.*

Lastly, let vs consider, that Resignation is deemed in the Law totally to be the act of the partie, and therefore if any Incumbent being plaintiffe in any action resigne his Dignity or promotion, his writ brought by him as Incumbent shall abate.

But if such Incumbent take out a writ concerning his Rectory, and afterward resigne, and againe be promoted to the same Dignity, before the returne of the Writ aforesaid, it is good and auaileable.

Vpon the part of the Defendant vpon the same reason, is the Law; that if any action bee brought against any Incumbent, that may charge him in respect of his seuerall promotions, his resignation (hauing the same suite; for that, that it is his act) shall not abate such writ or action.

It is to be noted, that there are two sorts of Resignations, the one is absolute, when the Incumbent intendeth so to make voyde the Church, and to surrender his right therein to the Ordinary, whereupon the Patron may present whosoeuer it shall please him to the Church, as if the said had beene voyded by Death, or other meanes of Avoydance, as by precedent authorities hath appeared.

The other cause of Resignation, is *causa permutationis*, of which in the Register, *fol.* 306. *b.* appeareth a precedent.

Where-

Whereupon alſo enſueth the forme of Preſentation in this manner.

In Dei nomine, Ego H.W. nunc Rector Eccleſiæ de P. London. Dioceſes & prius Rector Eccleſiæ de L. c. Dictæ P. Dioceſes proteſtor dico & allego in hijs ſcriptis quod ſi contingit quod huiuſmodi Eccleſia mea, de P. abſque dolo & culpa meis in hac parte à me aliqualiter evincatur volo & intendo ad Dictam Eccleſiam de N. abſque aliqua difficultat. libere & licite redire, & eam rehabere iuxta Canonicas ſanctiones & proteſtor inſuper quod non intendo nec volo ab huiuſmodi proteſtatione ſeu affectu eiuſdem recedere aliqualiter in futurum ſed eidem proteſtationi & contentis in eadem volo & intendo in futuris temporibus firmiter adhærere, iuris beneficio in omnibus ſemper ſoluo, &c.

But to what purpoſe Proteſtation ſhould ſeem in our Law, I cannot perceiue; for that, that it appeareth by the Booke in the 45 *E.* 3. & *Fitzh.* exchange it.

Lect. 16.

The next speciall meanes, in Avoydance of Spirituall promotions Presentatiue, is Creation.

NOw Creation is, where the Incumbent is not onely Elected, but consecrated Byshop, or Archbishop. By the former Dignities of such Consecrated, the Benefices becomes voyd, and the Churches or places seuerall (where their former Sanctuarie was to be executed) and vtterly discharged of their Incumbent, and this immediatly vpon Consecration without solemne sentence Declaratorie in the Spirituall Court.

The reason whereof, is not onely for Inconuenience of Pluralities; but also, because it should be likewise inconuenient for one and the same parson to be a Subiect and a Soueraigne, which in the course of our manner of Iurisdiction cannot be, but is reserued in the Superiour.

Neuertheless, such auoyuance is not before Consecration or Creation, nor before Consecration is he that is promoted, deemed or called Bishop, or Archbishop: as appeareth by these authorities of 5.*E.*2.*Fitzh br.*250.*vide* 9.*E.*3. *f.*1.*trial.*57 & 7.*E.*3.40.*a.b.*vide 21.*E.*3.40.*a.b.* 41.*E.*3.56.*b.*46.*E.*3.32. 11.*H.*4. 37.59.76.*&* 22.*H.*6.27.*a.*

For

For the better vnderſtanding of this kind of Auoydance, it is to be noted, that as foure things are required to concurre for the full perfecting of any Parſon or Parſons preferred to any Dignitie Eccleſiaſticall, preſentatiue or Collatiue, as (to wit,) firſt of all Preſentation, or as the caſe requireth Collation; ſecondly, Admiſſion; thirdly, Inſtitution, and fourthly & laſtly, Induction.

So in the promoting of a Biſhop or Archbiſhop, by the Spirituall lawes, were required (before the ſtatute of the 25. *H.* 8. *cap.* 20.) alſo foure things, anſwerable in many reſpects to the foure former before recited. As firſt Election, ſecondly Confirmation, thirdly Conſecration, Creation, or Inveſture; and fourthly, Inſtallation, or Inthronation.

The Election was made by the Deane and Chapter, or by the Pryor and Couent, where they being as Deane and Chapter, as in euery of the ſeas Cathedrall of *Canterbury*, *Worceſter*, and *Norwich*, in which Churches the Pryor and Covent was till the diſſolution of Monaſteries, at which time the ſame Pryories were diſſolued, and in ſteed of them in euery of the ſame Cathedrall Churches, a Deane and Chapter hath been by priuate Acts of Parliament erected. But in ſome other Cathedrall Churches, the Election hath beene both by Deane and Chapter, as of *Wells*; and by the Pryor and Covent at *Bathe*; and in the Sea of *Coventry* and *Lichfield*. And in

ſome

ſome other Cathedrall Seas, the Election of the Byſhop haue beene by two ſeuerall Deanes and Chapters, as in the Archbyſhopricke of *Dublin* in *Ireland*, where both the Deane and the Chapter of *Chriſts Church*, and the Deane and Chapter of Saint *Patricks* joyned in Election, and both of them vſed to confirme the grants of the Byſhop, although *Chriſts Church* was knowne to be the more ancient Church to that Sea.

As concerning therefore the Election of Archbyſhops and byſhops, the Kings of this Realme of their prerogatiue royall, and being immediate Patrons of the ſame Cathedrall Church, in ancient time gaue and beſtowed of their imperiall Iuriſdiction, Archbyſhopricks and Byſhopricks, to ſuch worthy parſons as they thought fit, without any Election of the Chapter as appeareth, in the 17. *E.* 3. 46. *Stower*, and this inueſture was by a ring and a little ſtaffe, by the Deliuerie of the King, and Enſignes of the Byſhop; but afterward in the time of King *Iohn*, in as much, as the Popes had made conſtitution, that no man ſhould enter into the Church by a ſecular perſon, totally, and that the Biſhop of *Rome* coueted to erect the Popery aboue the Throne of Kings. A great Controuerſie was now amongſt the Monkes of *Canterbury*, vpon the death of *Hubbert* their Archbyſhop, concerning the Election of a new one, and although the youngeſt ſect of the Monkes hauing

uing licenſe of the King, and alſo appointment of the King to chuſe *Iohn Gray*, one of the Byſhops in this Realme for their Archbyſhop, yet the quarrell grew to ſuch fervencie, that it could not be quenched vnleſſe from *Rome*, where the Pope taking opportunity of ſuch diſſention, would not receiue any of the Elected, but forced the Monkes to chuſe for their Archbyſhop *Stephen Langhton*, then Cardinall of Saint *Chriſogon*, whereof enſued the great diſcord betweene the King, and the Pope; of which, ſuch was the tyranny of Antichriſt, that not onely the whole Land was interdicted, and ſo remained fiue yeares. But the King was accurſed, and the Subiects were diſcharged of their obedience, and oath of their allegiance to their naturall Prince; and *Lewis* the French Kings ſon provoked to make warre, againſt King *Iohn*; vntill he were conſtrained to ſeeke peace at the hands of the Pope, to yeeld his Crowne to the Legate, and after fiue dayes to take it againe at the Legates hands, and become feodary tenant to the Pope for the ſame, paying an annuall ſum of mony to the Church of *Rome*, for euer; but alſo to content his Cleargy, he gaue to them alwayes free Election of Spirituall Dignities, which memorable antiquitie of the Kings prærogatiue and the loſſe thereof, is briefly touched in the 2. *H.* 4. 68. 6. and more at large by the Hyſtories of thoſe times, and although hereby free

Elections were giuen to the Cleargie, yet sued they forth the Kings license to proceed to Election.

The Election of a Bishop thus made, did not beare the name of a Bishop but was to be called Lord elect of the place or Bishoprick, to which he was elected.

The second is Confirmatiõ, which was vsually made by the Bishop of *Rome* and not any other, who (before such confirmation) vsed to examine the partie, and vpon cause of nonabilitie to refuse him.

The third is Consecration, which was performer by the Bishop and two other Bishops at the least of the same province where the Bishoprick then was, being thereunto appointed with the vse of certaine Ceremonies, as beatitudes, holding of the Bible ouer the head of the Parson to be Consecrated, laying on of their hands vpon his head, anointing, and other rites; thereunto requisite; And yet it is said, that the Pope reserued the consecration of the Bishop to himselfe after election and confirmation, and before creation and Consecration: he that was so elected and consecrated, might still retaine the name of his former dignity, and if hee would refuse the imposed charge of the Bishopricke.

38.E.3.30 b.

5.E.2. Fitzh.800, 2,E.3. Fitzh.Ire. 250,21,E. 3.5.6.

And yet after Confirmation and before consecration, of the parson confirmed, hee might exercise so much of his Spirituall function as concerned

concerned the Iuriſdiction, but no matters concerning Ordination might he meddle with, for the full vnderſtanding whereof it is to bee knowne, that all things belonging to the Epiſcopall function or Miniſtery, are to be reduced to three points; for they belong to him, either *Ratione Iuriſdictionis*, as the hearing of ſpirituall cauſes, Cenſures, and Corrections eccleſiaſticall, as Excommunications vpon offenders and ſuch like which may be performed by him after confirmation.

Or, *Ratione Ordinationis*, as giuing of Orders, conſecrating or allowing of Churches, or ſuch like, which he cannot doe before conſecration.

Or, *Lege Dioceſiana*, as the execution of Eccleſiaſticall payments and penſions due to him, as dioceſian of the Clargie rated vpon the biſhoppricks of his Dioceſſe, called therefore by the common Law *cenſus Cathedraticus*.

Notwithſtanding, the King may reſtore to him his Temporalties after confirmation and before conſecration if ſo it pleaſe his highneſſe, but this is *De gracia & non de iure*. 41, E, 3, 56 46, E, 3, 32 a.

But after Conſecration, he was holden in all reſpects a perfect Biſhop, and all his former dignities thereby were avoided, for although by Confirmation *ſpirituale coniugium contrahetur*, yet by conſecration *conſumatur*.

The laſt thing is, Inſtallation or inthronation, by which he is fully enabled, to purſue his Temporalties

poralties out of the hands of the King, and actually to enioy the benefit thereof, but if after consecration and before he sue for the temporalties out of the hands of the King, the free-hold bee in him or no, is diuersly taken in the 38.*E.*3. 90.*b*,5.

Notwithstanding, the Metropolitan ought to certifie the day and time of the consecration of euery Bishop, within his Diocesse, for according thereunto he shall be restored to his Temporalties, and this I thinke to be reason.

Thus you see, that in some respect the Election of a Bishop resembleth the Presentation of a parson, the Confirmation, resembleth the Admission of a parson, the Creation resembleth the Institution of a parson, and the Installation or the inthronation the Induction of a parson, yet in many other respects they differ.

And although after the abrograting of the Popes authoritie out of this Realme, it be ordained by the 25.*H.*8.*cap.*20. that the election of Bishops and Archbishops, should be altered and the King restored to his ancient prerogatiue therein, which prerogatiue King *Iohn* and his ancient progenitors long since enioyed, and although likewise the Ceremonies, forme, and manner of consecration of Bishops by the Authority of parliaments, in the time of King *Ed.* the fixt, were now appointed and published, all acts of parliament being repealed by the first

and

and ſecond of *Philip* and *Mary*, are now reuiued and in force, by *Eliz.* yet our former poſition holds now firme Law, that no Church nor Spirituall Dignitie at this day, becommeth voyde, by making the Incumbent therof Byſhop, vntill his Conſecration, as well by rigour of ancient time, as by Statute.

And therefore at the Common Law, if the King vpon defect, or otherwiſe, giue by vertue of the 25. *H.* 8. 20. by his Letters patrents to any fit perſon, any Byſhopricke or Archbyſhopricke within this Realme, without Election, and therevpon before Conſecration reſtore to him his Temporalties, or if the Pope had giuen a Byſhopricke to any fit perſon by reſeruation, which amounteth in Law to an Election and Confirmation, if the King had reſtored to him his Temporalties, yet in both caſes vntill Conſecration, he is no perfect Byſhop, nor his former Dignities by ſuch Grant and reſtitution of Temporalties become voyde vntill Conſecration as aforeſaid.

If before the 25. of *H.* 8. 10. the Incumbent of a Benefice had beene Elected Byſhop and confirmed, and before conſecration had, obtained of the Byſhop of *Rome*, a diſpenſation ſtill to enioy his former benefice, notwithſtanding his Creation or Conſecration, had enſued accordingly, yet by ſuch Creation, the Church ſhould not haue beene voyde, but the partie ſtill enabled to retaine the ſame Benefice againſt the patron

by vertue of such Dispensation.

So at this day, if an Incumbent of a Spirituall Benefice, be elected and confirmed, and before hee bee consecrated, obtaine licence or dispensation of the Archbyshop of *Canterbury*, to detaine the Benefice *incommendam*; yet hee shall be promoted to the same Byshopricke, although his licence neuer bee enrolled in the Chancerie, according to the 25. *H.*8. but onely enrolled by the Register of the Archbyshop, although the Consecration be before this licence or dispensation appointed to take effect, yet by vertue of such Dispensation, the former Dignitie or Benefice becommeth not voyd, by the same Consecration. Yet if the Incumbent of any Spirituall benefice be elected, consecrated, and confirmed Byshop, and after his Consecration proeureth a Dispensation of the Pope in papacie, or of the Metropolitan since the Stat. of the 25.*H.*8.*c.*20. such Dispensation shall not be available; because, by the Consecration, the former Dignity or Benefice was actually, and in Deed voyd; and then, neyther the Dispensation of the Pope, could at any time, nor of the Metropolitã at this time, take from the Patron, the right of his presentation of such avoyded Dignitie, by the Consecration acrewed to him; because, after the first Dignitie is once voyde by the Consecration, the Dispensation commeth too late.

Yet the King, *Ex summa autoritate sua Regia Eccle-*

Eccleſiaſtica qua fungitur, may grant (to the Byſhop that is conſecrated) power to take and receiue by preſentation, Inſtitution and Induction, any Spirituall Benefice, and to hold the ſame in *Commendam*, notwithſtanding his eſtate of being Byſhop, for ſo the Pope vſed to doe, and the ſame Authority is recogniſed by the Statute of the 25. *H.* 8. to be in the King or Queene of this Land, which was within this Realme by the Pope.

Finally, this is to be noted, that whereas before it hath bin ſaid, that Deprivation is the act of the Law, yet grounded vpon the act of the partie; So is Creation of the Byſhop, the act of the Law, wherefore if a man bring an action and pendant his writ, bee created Byſhop, the writ ſhall not abate; becauſe, it is onely the act of the Law, but yet Reſignation is meerely the act of the party, thus much for Creation.

FINIS.